Public Utilities

FORTNIGHTLY

December 20, 1945

RURAL ELECTRIFICATION'S REAL OBJECTIVE
By Grover C. Neff

« »

War Surplus—Yardstick or Club?
By T. N. Sandifer

« »

Electrification of Railroads in the Pacific Northwest
By Ernest R. Abrams

« »

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PUBLIC UTILITIES REPORTS, INC.
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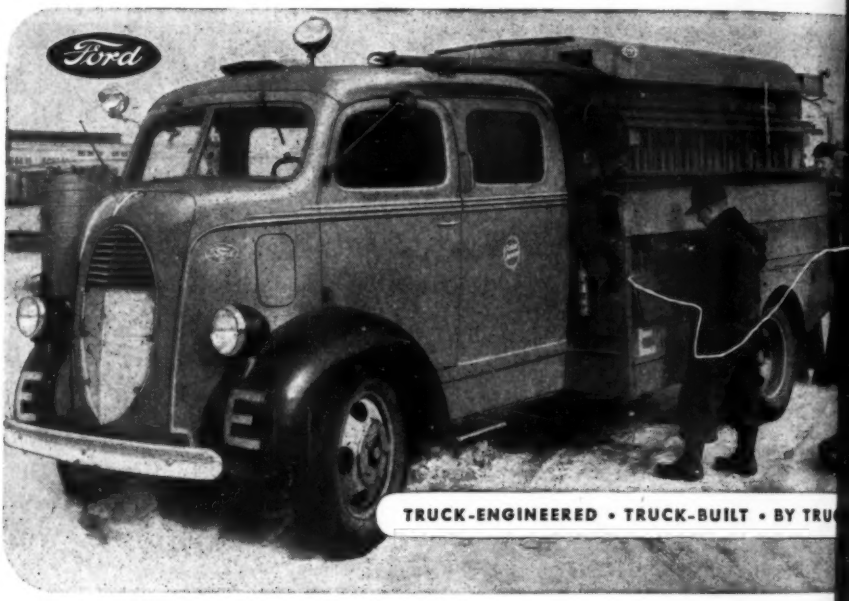

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Public Utilities Fortnightly

VOLUME XXXVI *December 20, 1945* NUMBER 13

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE editors take this occasion to wish all our subscribers and friends a Merry Christmas and a Happy New Year—the first time we have been able to do this with full heart and real meaning since the shadow of war fell across our native soil.

THE other day a new display poster went up in the downtown Washington ticket office of the Pennsylvania Railroad. It showed an ultra modern streamlined locomotive, probably much longer and larger than any models of steam locomotives now in operation. It was an announcement of steam turbine drive which was described as "the most important and revolutionary change in steam locomotion in one hundred years."

THIS is apparently an application to coal-burning railroad locomotives of the turbine-drive principle which has been so successful on ocean-going steamboats in recent years in developing high speeds and control features which were never previously considered possible for steam locomotion.

To those who have been following in a general way the progress of railroad locomotion practice during the past decade, it is apparent that the new steam turbine-drive locomotive is the product of the competition between coal, oil (Diesel), and electrified railway trackage. It is interesting too that the Pennsylvania Railroad, which featured this display, has already electrified much of its trackage, particularly its important key system between New York city and Washington.

ONE is tempted to ask why, if railroad electrification were such a success and had so many economic and operating advantages, the one railroad system which has perhaps the heaviest investment and experience with such operation should be featuring a new principle of locomotion which goes back to the use of pulverized coal? The answer may be, of course, that the Pennsylvania Railroad, like many other lines, is anxious to promote the healthy competition among the three fuels for their railroad locomotive business. On the other hand, it might suggest that electrified railroad track is advantageous (under the present state of the art at least) chiefly in the very densely populated and heavy traffic area such as the distance between New York city and Washington, D. C.

T. N. SANDIFER

The surplus problem is not so much a question of disposal as permanent economic policy.

(SEE PAGE 820)

IT is also noteworthy in this regard that the western lines, such as the Chicago, Burlington & Quincy, have gone in very heavily for investment in oil-burning Diesel locomotives. With that in mind, one wonders just what new arguments have been developed, or can be developed, to support the recent proposal that railroad systems in our most wide-open spaces—namely, the Pacific Northwest—should utilize the abundant cheap hydroelectric power being developed in that area for electrifying their rails.

IN other words, if the same railroad, which operates between Washington and New York and between Washington and Chicago, finds it feasible to electrify only the former run, while continuing to use coal on the longer run, can there be any different operating conditions which would justify the investment in railroad electrification in the much more sparsely populated areas served by railroad systems in the Far West?

IN this issue ERNEST R. ABRAMS, well-known New York writer on financial and busi-

ness matters, examines this proposal for electrifying the western roads (beginning page 829). It is much too early to guess just how successfully the proposed turbine drive steam-driven locomotive will be. But one must admire the vitality of the coal industry and its component locomotive manufacturing interests in refusing to quit under the threat of the more glamorous competition from Diesel engines for railroad electrification.

IF by the use of turbine drive and pulverized coal fuel, these locomotive builders can match speed, comfortable acceleration and deceleration, and last, but not least, the smoke, dust, and grime problem, who knows but that Old King Coal may be working on the railroads for many years to come. The most we can say at this point is that there seems to be plenty of life in the old fellow yet.

SIMPLY glancing over the catalogues which the Surplus Property Administrator issues periodically is likely to stagger the imagination of the average citizen with respect to the amount and variety of items which the armed forces have declared surplus. A good feature writer with a frivolous mind could probably get a great deal of fun out of wondering what the armed forces could ever have wanted with certain more bizarre items such as "one child's teeter-totter," and various cosmetics and lotions which even the Waves, Wacs, and lady Marines, in their most glamorous moments, could scarcely have been called upon to use in the line of duty.

BUT such an inquiry would simply be nibbling at the fringes of the surplus problem. Doubtless there were circumstances which justified all of these rather surprising commodity investments which are now part of the surplus inventory. More important and fundamental is the disposal of surplus items which everyone is quite willing to admit the armed forces had very vital need for while the conflict was raging. Take, for example, the thousands of cans of black make-up grease which the paratroopers and commandos had to use to black out their bright Caucasian features when making their night raids. Even a prolonged revival of all the minstrel shows that ever existed would not use that quantity of black make-up in hundreds of years for the purpose it was intended to fulfill.

THE surplus black make-up problem, in an amusing way, is only a miniature of many serious and confusing surplus problems involving really substantial tax-payer investment. There is the question of disposing of the two great pipe lines—Big Inch and Little Inch—which served so well in conveying gasoline from the Southwest and Southeast producing areas to the eastern markets and seaports at a time when the usual tanker transport via the Gulf was not safe because of submarines, and when most of the tankers had been pressed into the Italian service anyhow.

Now that the sea-going tankers have come back to their accustomed rounds, the oil refining companies find it unprofitable to make use of Big Inch and Little Inch. Yet, if it remains in the hands of the government it is likely to contain the seed of eventual demand for government operation in competition with private enterprise, just as the continued government control of Muscle Shoals after the last war eventually blossomed into the TVA.

AT any rate, both the oil and natural gas industries are fearful of such result. Yet at the very time when the natural gas interests were taking inventory among themselves as to what could be done about converting Big Inch and Little Inch into transporting natural gas (instead of gasoline) to eastern markets, the FPC continued to stress in its natural gas investigation the possibility that so-called "end use" of gas might be regulated. And regulation in this sense is probably tantamount to restriction.

INDEED, the FPC actually decided in a fairly recent but little noticed case — involving the Northern Natural Gas Company — to refuse authority for the construction of a pipe-line connection to Boone, Iowa, to supply natural gas as boiler fuel to an electric generating company. If the FPC continues along this line, it would seem to reverse the position it took early in 1944 in its 5-year report on the Natural Gas Act to Congress when it stated in effect that it had no authority to restrict the end use of natural gas. If still further restriction on end use of gas should take the form of limiting export of natural gas from producing areas to consuming areas where it would be used in competition with other locally accessible fuels, such as coal, then the dreams of the gas industry that it might convert and operate Big Inch and Little Inch will explode.

IN this issue we have a discussion of other phases of the surplus property disposal problem by T. N. SANDIFER, veteran Washington magazine writer and newspaper correspondent (beginning page 820).

GROVER C. NEFF, whose article on "Rural Electrification's Real Objective" appears in this issue, is the president of the Wisconsin Power & Light Company. This article in substance follows the line of his recent testimony before the public power subcommittee of the House Interstate and Foreign Commerce Committee considering increased lending authority for the Rural Electrification Administration.

THE next number of this magazine will be out January 3, 1946.

The Editors

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Remarkable Remarks

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FRED M. VINSON
Secretary of the Treasury.

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JOHN M. HANCOCK
Economist.

"Appeasement in the economic field does not appease any more than it did at Munich. The operation of . . . pressure groups can only create an artificial topsy-turvy situation that will destroy all of the plans of government and may undermine our whole economy."

EDITORIAL STATEMENT
The Wall Street Journal.

"Merely switching bureaus from one government department to another government department is not reorganization that will save any money unless something else is done at the same time. The something else is to make one bureau do the work that two have done previously."

GEORGE S. BENSON
President, Harding College, Searcy, Arkansas.

"Americans would take as a direct, personal insult any government pledge to provide them with jobs. If Congress tells the world that American people are no longer self-reliant, it will administer the most damaging blow that this generation of mankind has ever sustained."

EDITORIAL STATEMENT
The New York Times.

"Even the most optimistic estimates concerning the next two years do not envision the maintenance of 1944 or 1945 total wage and salary payments, to say nothing of a 40 per cent increase. Here is one key difference between economic conditions at the end of the two wars which has not been given adequate attention by economic stabilization policy makers."

ROBERT A. TAFT
U. S. Senator from Ohio.

"We talk of a planned economy under the Full Employment Bill and otherwise, but, as far as I can see, while there is plenty of miscellaneous and inconsistent planning, there is no plan. To make a plan we don't need the Full Employment Bill. We just need a putting together of the figures which the government has, a little common sense, and an ability to count."

DAVID LAWRENCE
Editor, The United States News.

"What we need in America is not a 'planned economy' in the sense of a government-made economy but a balanced economy—an orderly economy. Naturally this requires governmental cooperation—in fact, governmental intervention. The reactionary concept which holds that if you let things alone they will right themselves is based on the notion that the survival of the fittest and jungle law are also a logical philosophy."

EDITORIAL STATEMENT
New York Herald Tribune.

". . . the greatest handicap which could confront Congress in dealing with atomic energy would be the impression that it could make an appreciable contribution to human betterment—or avoid catastrophe—by thinking of the atom bomb as a peculiarly American possession which could be controlled by the patent laws, counterespionage, or similar measures applying to the territory of the United States alone."

WALTER B. WEISENBURGER
Executive vice president, National Association of Manufacturers.

". . . it is no exaggeration to say that if business were to become convinced that it will be faced with a government policy of trying to force an increase of 50 per cent in wages during the next five years in terms of present prices, that hundreds of thousands of plans for expansion and for new undertakings (small businesses) would disappear almost overnight, and with them would go the opportunities of millions of jobs."

I. F. STONE
Washington editor, The Nation.

"In the enactment and successful utilization of the Full Employment Bill much will depend on the intelligence of the smaller and the independent businessman. He will be wise to do less worrying about sacred cow words like 'free enterprise' and more thinking about the actual situation in which he finds himself. In a fully employed economy he can survive as a businessman. In a return to 'free enterprise,' as it was practiced before the war, he becomes again one of the little fish on which the big fish of the business world feed."

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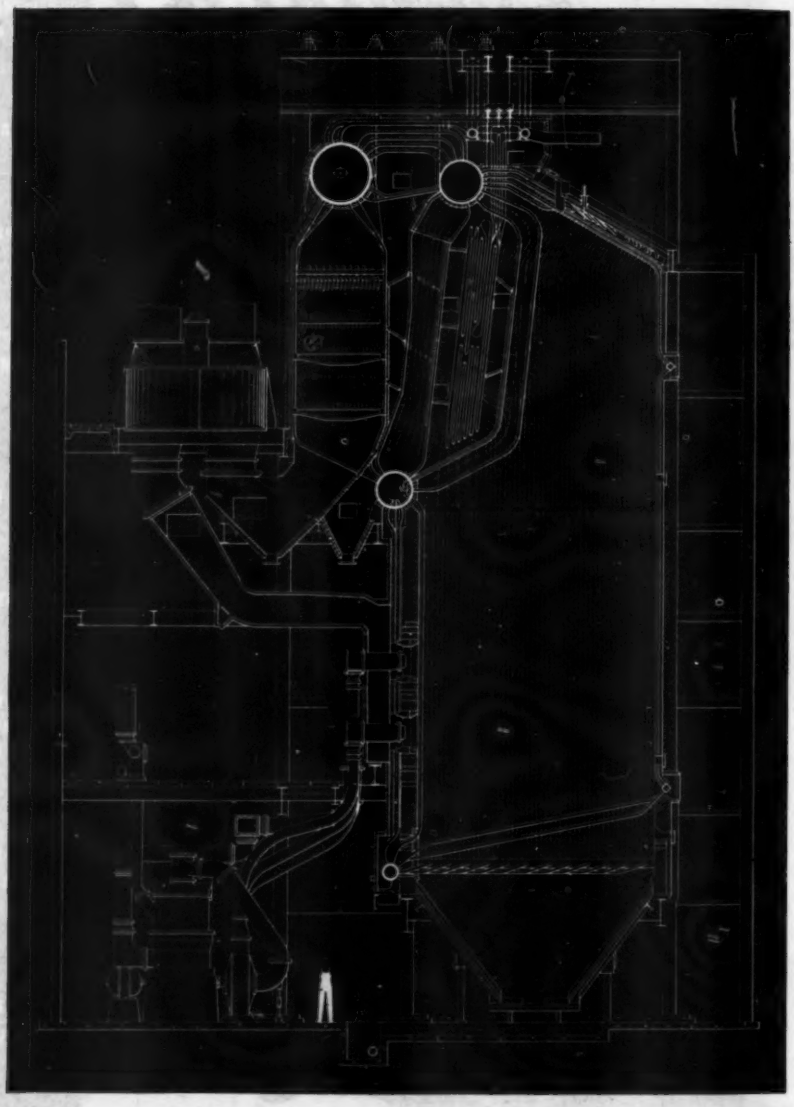

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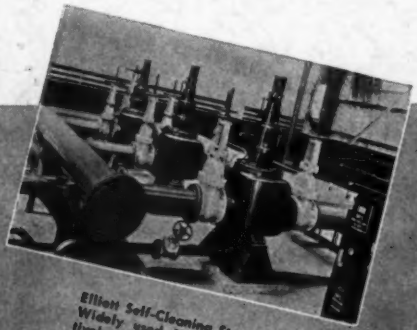

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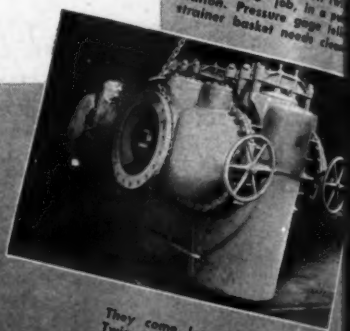

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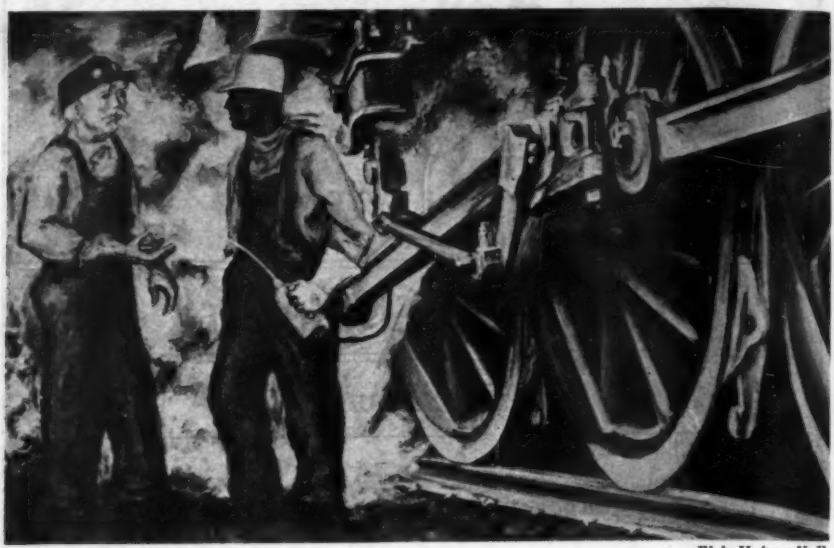
Utilities Almanack

December

20	Th	¶ *American Bar Association concludes meeting, Cincinnati, Ohio, 1945.*
21	F	¶ *American Institute of Electrical Engineers will hold meeting, New York, N. Y., Jan. 21–25, 1946.*
22	Sa	¶ *Institute of Radio Engineers will hold technical meeting, New York, N. Y., Jan. 23–26, 1946.*
23	S	¶ *Independent Natural Gas Association of America will hold membership meeting, Houston, Tex., Jan. 28, 1946.*
24	M	¶ *Federal Power Commission will resume natural gas investigation hearings, Houston, Tex., Jan. 28, 1946.*
25	Tu	¶ *Merry Christmas, 1945!*
26	W	¶ *National Metal Exposition will be held, Cleveland, Ohio, Feb. 4–8, 1946.*
27	Th	¶ *Exposition of Chemical Industries will be held, New York, N. Y., Feb. 25–Mar. 2, 1946.*
28	F	¶ *American Gas Association Conference on Industrial and Commercial Gas will be held, Toledo, Ohio, Mar. 28, 29, 1946.*
29	Sa	¶ *Kentucky Independent Telephone Association will hold meeting, Apr. 4, 5, 1946.*
30	S	¶ *Nebraska Telephone Association will hold meeting, Apr. 9, 10, 1946.*
31	M	¶ *Iowa Independent Telephone Association will convene, Des Moines, Iowa, Apr. 11, 12, 1946.*

January

1	Tu	¶ *Happy New Year, 1946!*
2	W	¶ *American Gas Association Distribution and Motor Vehicle Conference will be held, Chicago, Ill., Apr. 16–18, 1946.*



Courtesy of A.C.A. Gallery *Elsie Hafner, N. Y.*

"Train Time"

By Mervin Jules

Public Utilities
FORTNIGHTLY

VOL. XXXVI; NO. 13 DECEMBER 20, 1945

Rural Electrification's Real Objective

A plea for coöperation between REA co-ops and business-managed electric companies to let bygones be bygones and unite in the common objective of putting electricity to work on the farm.

BY GROVER C. NEFF
PRESIDENT, WISCONSIN POWER & LIGHT COMPANY

ELECTRIC utility companies as of the end of 1945 will be serving about 1,855,000 farms and their distribution lines will reach about 2,400,000 farms. By the term "reach" is meant that the distribution lines come within one-quarter mile or less from the farm dwellings.

A recent survey just completed by the Edison Electric Institute shows that the electric companies plan to add in the next three years 560,000 farm customers. They will then be serving 2,415,000 and their lines will then reach 2,850,000 farms or over half of the nation's farms that have occupied dwellings and are within practical reach of distribution lines.

The foundation for widespread rural electrification was laid by the electric companies. Before retail distribution power lines could be extended far into the country, a widespread network of transmission lines and substations was necessary. When the smaller cities and towns of the nation had been provided with dependable, 24-hour service, it became feasible to build radiating distribution lines out into the farming areas. Farm electrification got under way in earnest in the early twenties and before the great depression put a stop to this

program (by rendering the farmers without means to buy equipment and to make the necessary farmstead electric installations), the companies were making rapid strides in building lines and adding farm customers. As soon as the farm income improved the companies again resumed their former rapid progress in making farm-line extensions. This continued until they were again held up, this time by limitations due to the war, part of which limitations—materials—are still felt.

THE prior provision by electric companies of numerous and dependable power sources throughout most of the farming areas of the country made it possible for REA coöperatives quickly to go forward with their distribution lines. The progress of the REA program was simplified and expedited by reason of the fact that these adequate and reliable sources of power were widely available at rates lower than the cost were the coöperatives to generate and transmit their own power supply. This widespread provision by the electric companies of transmission lines and substations backed up by adequate generating capacity was thoroughly demonstrated during the present war in connection with the manufacture of munitions and the provision of training facilities for the armed forces. Army and Navy camps and other establishments and munitions plants, no matter how remotely located, in practically every instance found that they were able to tap an adequate power supply already provided, thus avoiding costly delays and large expenditures for building transmission lines or for the construction of local generating facilities.

By the end of 1935 electric utility companies were serving about 750,000 farms and their lines reached about 1,250,000 farms. (In the next nine years to December 31, 1944, they added another 925,000 farms net, after deducting acquisitions by REA co-ops.) In the same 9-year period the gross additions of REA co-ops including acquisitions were 915,000 farms. By the end of 1945 the companies will be serving approximately 1,855,000 farms, and by the end of 1948 they expect to be serving 2,415,000 farms with their lines reaching about 2,850,000 farms.

I POINT out these facts because the companies have been accused of slothfulness in bringing electricity to the farmer, of having jumped into the farm electrification business only when they saw coöperatives enter the field. The figures I have cited, however, and the history of farm electrification show that in general the electric utility companies over a long span of time have been advancing rural electrification as fast as developments in the art, both in supplying electric service and in the provision of farm utilization equipment, would justify.

Preliminary figures issued by the Bureau of the Census indicate that the total number of farms in the United States is about 6,000,000. Statistics of the Institute indicate that 3,100,000 of these farms will have electric service as of the end of this year, and, based on the 1940 report of the Bureau of the Census, the Institute estimates that 900,000 more farms are reached by distribution lines but not yet taking electric service. In other words, 4,000,000, or about two-thirds of all farms are now reached by power lines.

RURAL ELECTRIFICATION'S REAL OBJECTIVE

With 4,000,000 farms now reached by distribution lines, there remain 2,000,000 yet to have electricity brought to them. But a considerable part of these are beyond practical reach or are not prospects for electric service.

1. Experience of electric utility companies indicates that at least 5 per cent of the nation's total number of farms are beyond the practical reach of distribution lines, and that if they are to be served it should be by isolated farm plants of one kind or another.

2. Based on the 1930 census, it is estimated that another 100,000 of the remaining farms are tracts of land without buildings.

3. Many more of the unserved farms are without any occupied dwellings.

A REPORT recently issued by the Bureau of Census giving figures for October, 1944, indicated that there are 1,200,000 vacant farm dwellings. Most of these are tenant houses and many of them will no doubt be reoccupied in the next two or three years; but these figures would indicate that a few hundred thousand farms at present are without occupied dwellings.

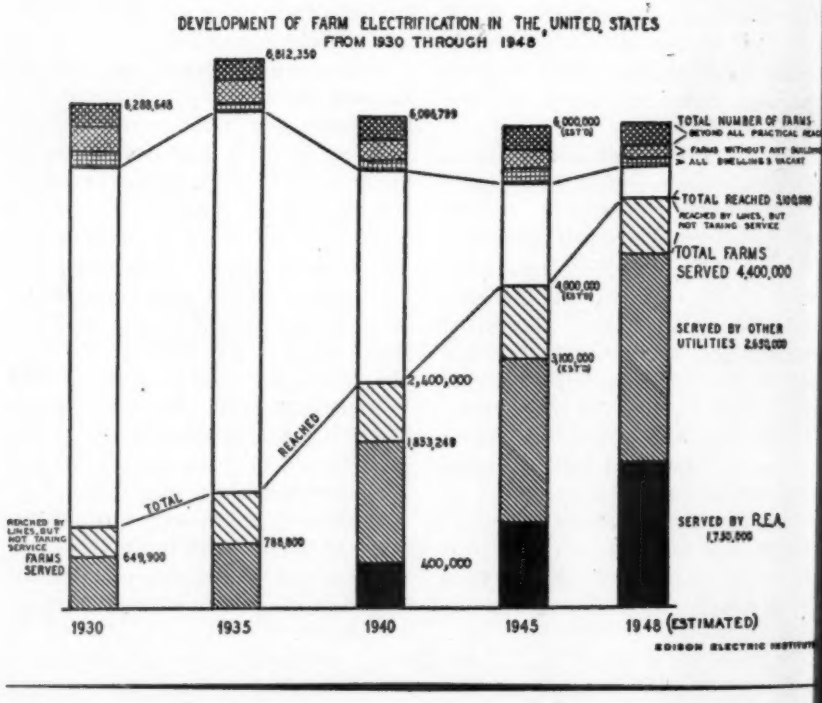
Assuming conservatively that three years from now the number of farms without occupied dwellings will have shrunk to only 100,000 and that another 100,000 farms are without buildings and that 300,000 farms are beyond practical reach of power lines, we have a total of 500,000 farms that are not good prospects for electric service from distribution lines. Subtracting this 500,000 from the 2,000,000 farms beyond the reach of existing distribution lines, we have left only 1,500,000 farms to which distribution lines can reasonably be extended in the coming years. Even this reduced number, unless new farm areas are developed, is subject to further shrinkage because of (1) the continued trend toward bigger farms which is brought on by modern farm machinery, and because (2) the automobile, truck, and tractor enable the farmer to operate his land at some distance from his domicile.

ELECTRIC utility companies, as stated before, plan to connect 560,000 additional farms in the next three years. Utility districts and municipalities will add another 40,000 farm customers in the same period. The REA has announced that it expects to add in three years 1,300,000 rural customers, of which about 1,000,000 will be farms. This totals 1,600,000 farms, which is 100,000 more than the number remaining unreached after deducting those without occupied

FARMS TO BUILD POWER LINES TO

Total number of farms, about		6,000,000
Number reached by power lines (electric companies and REA co-ops)		4,000,000
Farms not reached		2,000,000
Farms beyond practical reach, 5% of all farms	300,000	
Farms without buildings	100,000	
Farms without occupied buildings	100,000	500,000
Remaining farms to build lines to		1,500,000

Chart A



dwellings or beyond practical reach. Of course, there will still be about 15 per cent of unserved farms along existing lines, but to indicate how difficult it is to approximate 100 per cent saturation, it may be observed that in incorporated communities of 1,000 population and less, most of which have had electri service available for fifteen to thirty five years, only 84.5 per cent of all th occupied dwellings in 1940 were wire for electricity, leaving 15.5 per cen still not taking the service.

The accompanying Chart A illus

trates the progress of rural electrification over the past fifteen years and the outlook for the next three years, at the end of which time the task looks to be approaching completion so far as the building of REA distribution lines is concerned. This chart assumes that in the next three years the REA coöperatives will be able to connect about 700,000 additional farms. According to their past performance and according to the experience of the electric utility companies, even this number is a large undertaking for a 3-year program.

WHEN power lines are built to reach the unserved farms, they will reach all farm dwellings and will also reach practically all the rural nonfarm homes. Hence, in attempting to size up the remaining rural electrification job, we need only reckon the unserved farms with dwellings. However, it may be worth while to examine briefly available information on the total number of rural dwellings, farm and nonfarm, that are without electric service.

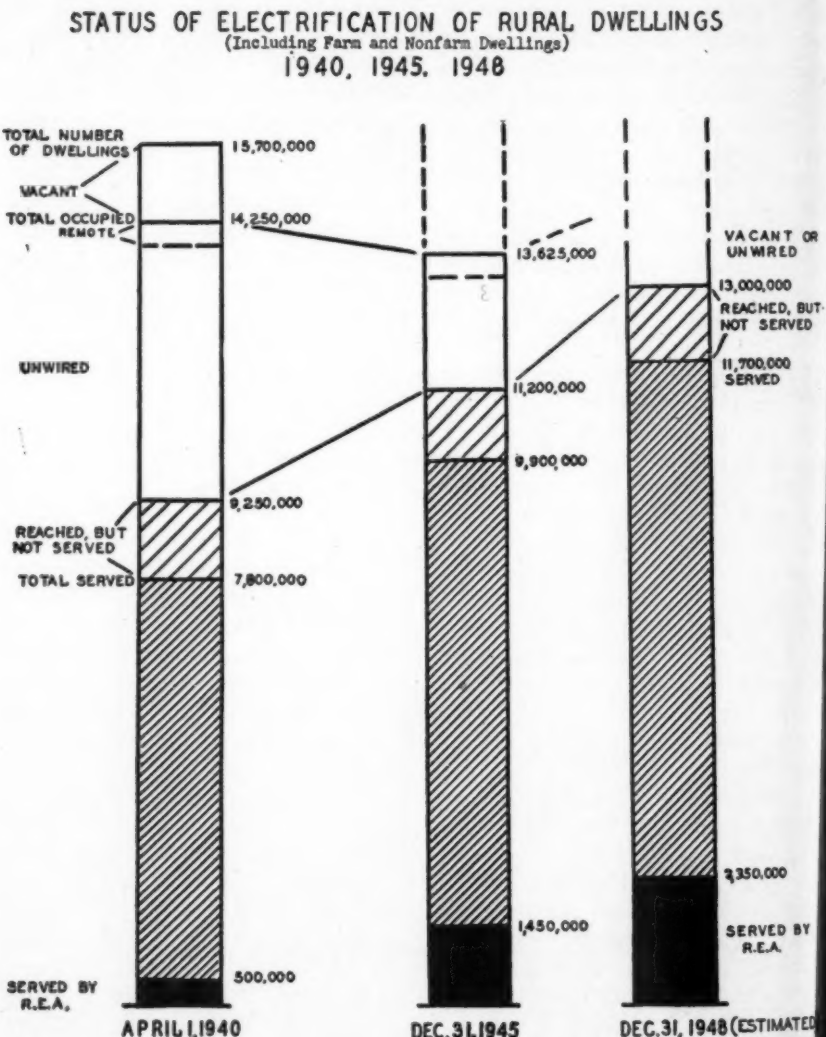
The 1940 housing census showed that about 6,500,000 occupied rural farm and nonfarm dwellings out of a total of about 14,240,000 did not then have electric service. The 1944 housing report (issued July, 1945) of the Bureau of the Census, previously referred to, showed that this number of occupied dwellings without electric service had been sharply reduced, both because many additional houses had been wired and because the number of vacant dwellings had increased sharply, no doubt as a result of war conditions. From this report it appears that as of the end of this year there will remain only about 3,500,000 occupied rural dwellings without electric service located outside of incorporated towns and villages. About 1,100,000 of these are already reached by existing distribution lines, leaving only 2,400,000 yet to be reached. The farm extension programs of the companies are expected in the next three years to serve about 880,000 additional rural homes. Utility districts will serve another 50,000. About 400,000 of the occupied rural dwellings may be considered to be beyond practical reach of distribution lines. This reduces the number without service that practically can be reached to about 1,100,000 occupied rural dwellings, which is considerably less than the announced 3-year program of the REA to serve 1,300,000 rural customers.

OF course, several thousands of vacant rural homes can be expected to be reoccupied, most of which will not be wired homes; but, since they are largely tenant dwellings, the bulk of them will be adjacent to existing lines. As stated before, the lines built to serve the farms will reach the farm dwellings and practically all the nonfarm dwellings. Once the distribution lines have been built the cost of adding additional customers along the line is not large. It averages about $112 per additional customer. Chart B (page 816) shows graphically the progress in electrifying rural dwellings.

As stated before, the progress of the REA program was greatly simplified and expedited by reason of the fact that adequate and reliable sources of power had been made widely available by electric utility companies at rates lower than the cost where coöperatives generate and transmit their own power

Chart B

STATUS OF ELECTRIFICATION OF RURAL DWELLINGS
(Including Farm and Nonfarm Dwellings)
1940, 1945, 1948



supply. A relatively small amount of extensions to existing company-owned transmission lines is all that has been required to effectuate the wholesale supply of power to practically all the REA coöperative distribution systems

that have been built, and this will be the case for those that conceivably will be built.

Nevertheless, several large generating and transmission systems have been financed by REA, and allotments have been reported for more such that largely duplicate existing generating and transmission facilities. It is undoubtedly a fact that the cost of power delivered to the distributing coöperatives from generating plants and transmission lines, already built by REA-financed coöperative agencies, is equal to or higher than the wholesale rates charged by electric utility companies to the REA distribution coöperatives in the same general localities.

THE electric companies estimate the cost of connecting 560,000 additional farms at $224,000,000. The cost of connecting about 320,000 additional nonfarm customers along the same lines is estimated to be about $36,000,000 additional, making a total of $260,000,000.

The total funds advanced by REA from the time of its creation in 1935 to December 31, 1944, was reported to be approximately $406,000,000, and this resulted in serving 1,216,000 customers, of which 935,000 were farm customers. If the REA coöperatives in the next three years add 700,000 farms and a corresponding proportion of other rural customers, and their past record of additions as well as the experience of the electric companies, shows that this is a big undertaking, it would appear from the 9-year average costs that the total cost would be $304,000,000. If they could add a million farms in that length of time, in accordance with the REA's stated 3-year program, the total cost on the same basis would be about $435,000,000. After deducting the farms planned to be connected in the next three years by other agencies, however, there appear to remain only 900,000 that are prospects for service from distribution lines. According to the 9-year average cost, it would take $390,000,000 to serve this number.

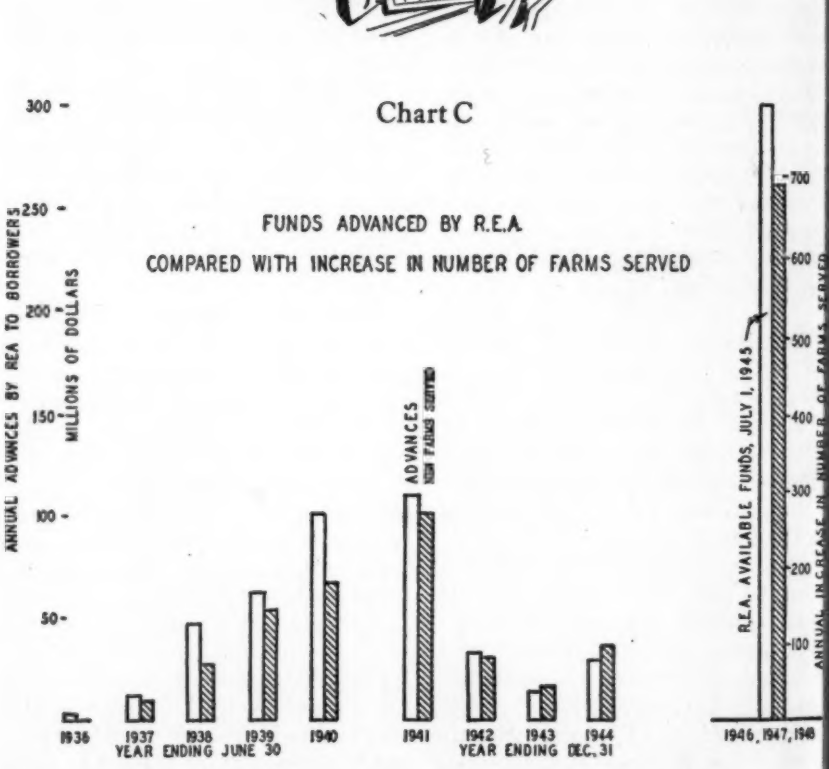
The REA as of July 1, 1945, according to a recent press release of its administrator, had $200,000,000 in new appropriations and an unexpended balance of approximately $100,000,000, making a total of $300,000,000 available to carry forward its electrification program.

This is three-quarters of the amount estimated to be required to take distribution lines to all remaining practical prospects for distribution line service from REA coöperatives. If, in the next three years, REA coöperatives can extend distribution lines to 700,000 farms and a corresponding proportion of other rural customers, the $300,000,000 currently available would be approximately sufficient to execute this program.

THE total amount of funds advanced by REA in each of the nine years of operation ending December 31, 1944, and the number of farm customers added each year are shown in Chart C. It shows also the $300,000,000 available as of July 1, 1945, most of which would actually be spent after January 1, 1946. The chart also shows the number of farms to which this $300,000,000 will bring service as indicated by the 9-year average cost.

The figures herein cited demonstrate that the electric companies have been

Chart C



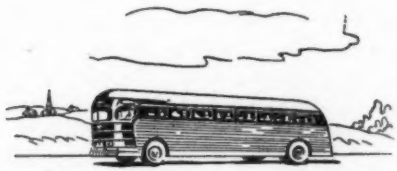
going ahead with the task of electrifying rural America and that they will continue their efforts on an extensive scale. At the end of the 3-year program practically all the farms in the New England, Middle Atlantic, East North Central areas, and in the section west of the Rocky mountains, except those that are isolated or without occupied dwellings, will have been reached by electric distribution lines. Only a few hundred thousand farms in the southern states and the Great Plains areas would remain to be served. Of course, there will remain rural areas that may be expected in time to become prospects

for the extension of more farm lines, but by its nature this would be an operation that will move at a slower pace for many years. But the end of the big task of taking electric service to the great bulk of farms is now in sight.

Now that a major portion of the job of building electric farm lines up and down the highways of this nation has been finished, it is in the interest of everybody that the REA and its coöperatives and the electric operating companies approach the job of rural electrification in a coöperative manner. If this can be done, more farmers will get electric service, will get better electric service, and at less cost.

Operating company people and REA co-op people serving in adjacent territory should meet with each other and honestly and frankly discuss the best and most economical way of getting more electric service to more farmers. Those farms that can be most economically and best served from REA co-op lines should be served by such lines, and those farms that can be best and most economically served from lines of the operating companies should be served from those lines. Agreement can be reached in most cases.

Rural electrification is electricity at work on the farms; that is the real objective. The building of electric lines is merely a means to an end. Certainly, REA co-ops and operating companies can settle their differences with reference to line building, power supply, etc., and can then work together on the problems of efficiently applying electric power to the many farm operations.



Repairs on the Wing

A COLUMBIA, *South Carolina, bus driver was moving down Sumter street with a load of passengers when he noticed, at the corner of Sumter and Green, that another city bus had stopped.*

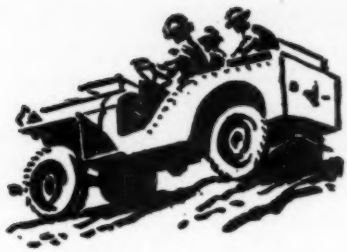
He stopped too, and called over to the other bus driver, "Whassa matter?"

"Having my brakes tightened," the other driver shouted back.

Protruding from under the bus were the legs of a company mechanic, so the driver of the first bus hopped out of his vehicle, dashed over to where the second bus was parked, and leaned under the bus to speak with the mechanic.

After he had finished his job, the mechanic crawled out and took his place under the first bus.

"Thought I'd have my brakes tightened, too, while I was here," grinned the driver.



War Surplus—Yardstick or Club?

The disposal of government properties no longer needed for military purposes is a stupendous problem, the solution of which, says the author, will cause some twinges which will be felt in the business world, including the utilities.

By T. N. SANDIFER

THERE are two axioms for military guidance in war, only one of which will be found written anywhere. The first, and unwritten, rule is, when ordering a military commodity, to put down any reasonable first digit, then keep punching zeros on the machine to the end of the line. This way, a military procurement officer avoids tangling with the second, and written, rule. This last is unofficial, but goes like this:

"To order too much of anything may be an error of judgment, or only a misdemeanor—to order too little is a crime."

Among the Distinguished Service medals flowing freely to the Pentagon these days will undoubtedly be a few to some who read the last part of the second rule, and used a free elbow on the machine. What to do with the stuff is only a civilian headache—not that the Services aren't willing to do their best, but in some Washington quarters there is considerable reluctance to let them go further in the matter. Anyway, what is happening today with the war's left overs is a civilian-managed affair, and is fast building to the all-time public hang over in official records.

The pertinent part here is that some twinges, at least, are going to be felt in the business world, including the utilities. The reason is that, from a merely king-size commercial problem, the disposal of surplus war properties, particularly those in the utility field, is rapidly shaping into a proposition of using the properties variously as a pile of bargaining chips, a club—"yardstick"—or a political football.

In the case of the surpluses left abroad, particularly in Europe, these have now been put in State Department hands, with direct instructions by a Senate committee that they are to be used as blue chips in manipulating foreign policy. Specifically, they will be used as bargaining inducements to ob-

tain abroad commercial and military rights or concessions.

For this purpose the stocks overseas are capable of versatile use. Supposing some concession in communications were needed, the price might be a field full of bulldozers or trucks. In short, the properties do not necessarily have to be in the same suite, so to speak.

RUSSIA wants machine tools for industrial expansion. The United States has the equivalent of a 15- or 20-year production of these tools acquired in the war. The Russians appear to have been able to get a lot of things just by moving them from where they were, but there are limits. So, the plan is to use war surplus stuff for bargaining abroad.

Hypothetically, this touches utility interests; if, by chance, the object sought in the bargaining affected their field, there would probably be proposed some community participation, as the use of public property to secure a favor for some one organization might rebound.

Merely putting the problem in State Department care hasn't solved the complex situation abroad, of course. Apparently discouraged with what had developed at home, a senatorial mission went abroad, but, on its return, had very little to report that was good. This balances the home situation, but the committee found so much abroad to raise questions about, that hearings were launched immediately. These were before the Mead committee, the old Truman investigation.

Just as a side light, the investigation abroad disclosed that fully 20 per cent of all Signal Corps equipment which had been shipped to the Mediterranean war area during hostilities was in storage depots on May 10, 1945, when hostilities ceased.

IT was while these disclosures were being discussed before a Senate investigation that the huge, uncalculated stockpile abroad was turned over to the State Department. John W. Snyder, formerly Surplus Property Administrator, and now Director of Reconversion, commented on this move.

"This is a hopeful approach," he declared, "but it must be moved on cautiously. As a nation we have adopted the policy of free access to resources, of universal equal treatment in communications, of lowering or removing barriers to international trade and intercourse . . . to some extent we may be able to move toward these goals by trading surplus property; to a large extent it is a matter for the exercise of our position of world leadership, and of reaching bilateral and multilateral agreements that are mutually advantageous."

This expression from Mr. Snyder, however, merely reflects an observation of Senator Mead, in a committee statement, on the return of the investigating group from Europe.

"It should not be assumed," he said, "that only dollars, or even foreign currency or goods, would be acceptable to our government in the settlement of such accounts.

"It is entirely possible that other benefits, such as trade concessions, transportation operating privileges, communications, or less tangible concessions embodying some assurances of future peace might be accepted by our government in the absence of ability to make a cash settlement."

There are other evidences that members of Congress, particularly, were interested in the diplomatic exploitation of our surpluses abroad, particularly where these have some value on the ground, such as utility installations, and there was considerable impatience manifest on the return of the Senators that apparently this side had been neglected, and, in fact, that there appeared a disposition to let the whole thing slide.

IN view of the broader implications of the situation, the make-up of the surplus for disposal, here and abroad, is of only incidental interest. However, $10,659,000,000 of the total war production was in communications and electronics equipment.

Of the total, $4,433,000,000 went for radio, $3,719,000,000 for radar, and $2,507,000,000 for other similar equipment, including aproximately 5,262,000 miles of field and assault wire. Communication equipment — telephone, telegraph, wire, cable — was produced, totaling $2,500,000,000, for the armed forces alone, including the assault wire mentioned.

Output of communication and electronic equipment rose from $25,000,000 in the last half of 1940 to well over $1,100,000,000 in the second half of 1942, and by 1944 reached a rate of production over 70 times that of 1940. In fact, WPB Chairman Krug pointed out recently, the atomic bomb merely cut in on what was burgeoning as an electronic era, electronic development having proved, in his opinion, the second most sensational achievement of modern science—which, incidentally, contributed much toward the future of the taming of the split atom.

A measure of the span of electronics production is in the fact that radio production amounted to $155,000,000 for military purposes in 1941, but by 1944 amounted to $2,823,000,000; in the 5-year period, July, 1940-August, 1945, with radar scarcely more than a laboratory project in the first period, there was produced $3,700,000,000 worth, two-thirds of it in the last eighteen months of the period.

"Many people do not realize the enormous volume and cost of our surpluses abroad," John W. Snyder, Director of Reconversion and Mobilization observed later, let alone those on this side of the water.

IT will be a matter of weeks after this appears, probably, before a sound inventory of the goods abroad is available. The job is complicated by the very large proportion of our surplus property abroad in the form of installations — some of permanent value, others which may or may not have any postwar value.

The problem is still further involved by the absorption into economic or

¶ "RUSSIA *wants machine tools for industrial expansion. The United States has the equivalent of a 15- or 20-year production of these tools acquired in the war. The Russians appear to have been able to get a lot of things just by moving them from where they were, but there are limits. So, the plan is to use war surplus stuff for bargaining abroad.*"

other daily use in the community of such facilities as have immediate value. There is a pipe line, American-owned, from Marseille up the Rhone valley. The French would like to have that. At Leghorn, Italy, the people are completely dependent on an Army portable power system. This situation is not peculiar to the European war zone by any means. It could not be ascertained if this Army portable system that now sustains Leghorn is one of four floating power barges, all of which are technically surplus from the war, and three of which were sent abroad. However, one such barge is stated to be still in use in the United States, furnishing municipal power at Jacksonville, Fla., where an influx during the war required this supplementary power installation.

The extent to which Army communications installations abroad are being used in daily life in one or another European community is conjectural, but probably surprisingly large, in view of dislocations of one kind or another, in the normal facilities for communication, power, water, and other services of this nature. The fact that many such installations may be a joint project, with the ground, buildings, or other contribution from the locality, and the equipment, engineering, or other services from the United States, is still another consideration, as was pointed out earlier.

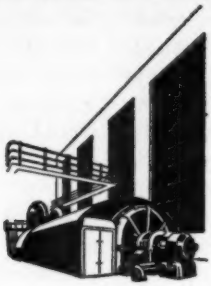
THE present situation is, Senator Mead complained on his return, that we have inadequate or no documented postwar rights in most of our foreign facilities. The Army put in motion a survey looking to this end, but there was considerable uneasiness among the returning Senators that as the individual leaders and units became intrigued with an imminent return home, the matter of what to do with any Army or other government surplus would assume a distinctly academic quality.

A great many such installations, mostly Army-built but to a lesser extent also Navy, in Europe are of a permanent nature and constructed at great cost. Such facilities include airfields and aids to air navigation; ports, harbor equipment, railroad trackage, and rolling stock; communications such as radio transmitters, receivers, telephone lines, switchboards, and equipment; besides others.

Some are portable, and some semipermanent. The radio station of the Office of War Information (a recently defunct government agency) at Algiers is one troublesome property. Many installations were so located and constructed that there is not much likelihood of any immediate commercial demand for them. On the other hand, it was found, many have extreme value, particularly now, in the case of extensive destruction of the normal installations resulting from war.

Thus, communications facilities of the OWI, Army Signal Corps, and Navy Communications may be actually indispensable in international communications, it is stated. Although some of these may have no apparent present value, members of the visiting delegation were impressed with their possible bargaining value in acquiring rights and properties which would be of use to the United States.

OBVIOUSLY, some of these utility installations, especially, are of vital



Span of Electronics Production

"A MEASURE of the span of electronics production is in the fact that radio production amounted to $155,000,000 for military purposes in 1941, but by 1944 amounted to $2,823,000,000; in the 5-year period, July, 1940-August, 1945, with radar scarcely more than a laboratory project in the first period, there was produced $3,700,000,000 worth, two-thirds of it in the last eighteen months of the period."

day-to-day value abroad. In the situation that has prevailed with our forces —some units getting sudden orders moving them, for instance, from France to Germany, from Italy home— there has been an immediate question for the local commander to solve. He might have had some higher authority or over-riding instructions, but his decision usually has been whether to pull out the wires, leave them there, dismantle some other equally needed facility, or move out perhaps the next night, with the native population left in sole custody and control.

In some instances where the Americans on the spot were too busy with the war, it has been found that our rights were not very clearly established at any time, and we may have some trouble in asserting any claim. The Signal Corps stock, already cited, is evidence that such property is no bagatelle, even in an Army supply officer's book.

A large part of the equipment was intended for specific purposes in the minds of theater commanders, which later became unnecessary with changing situations. A considerable amount of this particular consignment was laid down on the beachhead for rehabilitating installations in northern Italy expected to be destroyed. It was found later that these installations were intact, thus wiping out the need for such stock. Nevertheless, the Signal Corps had been nothing less than canny in laying up its stores for a possible contingency, it was found; there were 4,876 radio sets, 1,355 tactical switchboards, and 1,068 power units, as well as cable in large quantities, batteries, and other goods. In fact, it was reported, it was an "unusual accumulation."

As members of the Senate committee pointed out recently when hearing members of the RFC and other disposal agencies, some of these various items are desperately needed on this side right now.

However, there is a slight technical and bureaucratic snag in the way of restoring any such goods to domestic use. The law provides that once an item is declared surplus overseas, it cannot be brought back to this side. It must be earmarked at the request of some agency over here and, if found necessary, it can be shipped home. Here is where criticism of the lack of system in inventory and maintenance comes in. Nobody, up until recently, knew just what was overseas and, furthermore, nobody knew what was surplus and what was still necessary over there.

Until VJ-Day, any usable articles, of whatever kind, were tentatively in reserve for the Pacific. Since that time, as many members have intimated since returning, the main idea overseas has been on something else besides what to do with a few thousand extra switchboards, or some other extras.

Doubtless a large part of the stocks abroad could be utilized in one or another of the devastated areas. A recent report on the German utilities indicates that telegraph and telephone services are available for civilian use in a number of communities and cities, but there is no important long-distance service between cities. Priority has been given to establishment of networks for military and essential civilian needs over the restoration of private communications.

There was extensive damage to transmission lines, low-pressure gas mains, and gas distribution systems, from bombing. About 25 per cent of the electric generating capacity of western Germany was found in operating condition. High-voltage lines are being restored, and hydroelectric power is now available to all principal points in Bavaria. In this most-bombed country may be seen a part of what may be the case in other countries.

WHEN we start to dispose of surplus abroad, we run into some general questions that are hard to answer. The first is, what do we get in return? None of the countries can pay us adequately in dollars—they don't have that much of our money for payment. If they did, the surplus would then be absorbed abroad, instead of new goods which we might like to sell there. And we don't want their currency.

That leaves the other possibilities involved in the transfer of the matter to the State Department; economic equities, perhaps concessions to operate some facilities without being subjected to discrimination. The Algiers radio, for instance, wouldn't be of much practical use, perhaps, but it might be a useful foot in the door.

From all of which it seems fairly certain, then, that anything the United States gets back from abroad may prove to be very intangible in many instances, such as good will (transient, perhaps); some general rights to operation; and, in certain cases, perhaps some future commercial advantage, as in the case of our installations that may need eventual replacement, and which might lead to some trade in our equipment where formerly another country's products were in use.

As to any commercial rights ob-

tained abroad through the medium of horse trading on our current foreign stocks, the present outlook is that any exploitation is most likely to be of a semiofficial nature, or at least hedged around with many official checks and controls. Any private operations almost certainly appear likely to require considerable governmental backing, if only in the field of moral support.

NOT everything abroad, evidently, is flooded with sweetness and light, especially where American interests are making a reëntry. During congressional debate on the stabilization fund, for instance, a hostile Senator pointed out that if we were to sell certain military surplus goods now in the Middle East to Egypt—for illustration, airplanes—it would be perfectly in order if the British home government disapproved of Egypt buying these American goods, to disqualify the pounds used by Egypt as currency, thus blocking the purchase. In short, doing business abroad is going to have angles that only strong and willing official support may solve.

This could discourage American interests from any participation in the projected deals for concessions overseas, and might, perforce, leave the government to handle them if obtained.

That is the picture, some of it obviously and necessarily conjectural, from one Washington viewpoint. On the other hand, going into the bureaus concerned with the problem here and abroad, there is an orderly, if overwhelming, minutiae of regulation and orders piling up. The impression from this approach is that of a huge bureaucratic machine, grinding endlessly away at multibillion dollar stockpiles, inventories, and warehoused goods.

Surplus Property Board has a very comprehensive price regulation covering sales of surplus abroad, priority of purchasers, policy, and nearly everything. Sales are being made overseas. The Office of Price Administration periodically issues its own regulations, such as SO 94, on sales of electric generating units by RFC or other government agency. The Army-Navy Liquidation Commission, concerned with surplus disposal abroad, has its own broad pricing formula for determining "fair value" selling prices on goods sold overseas.

APPARENTLY the surplus disposal problem gets complicated after it passes the regulation-setting stage. Some of the charges of confusion in the disposition of surplus have come from municipal authorities, for instance. The director of supplies for

¶ "THERE *was extensive damage to transmission lines, low-pressure gas mains, and gas distribution systems, from bombing. About 25 per cent of the electric generating capacity of western Germany was found in operating condition. High-voltage lines are being restored, and hydroelectric power is now available to all principal points in Bavaria. In this most-bombed country may be seen a part of what may be the case in other countries.*"

Pittsburgh, Pa., testified in a Senate committee hearing that the city had planned to buy $2,000,000 of equipment and supplies from this source. "So far," he said, "we have bought $148.50 worth."

And this, he added, was below grade, so that the city is entering a claim. It may be recalled that municipalities enjoy priority in buying surplus stocks.

In order to buy wheelbarrows, the witness said, it was necessary to buy bed lamps, which Pittsburgh doesn't want. To buy hemp rope, which it wanted for an unstated purpose, the city would have to buy cement.

In the case of New York, the purchasing commissioner reported, there were plenty of conferences, but no purchases. A North Carolina municipal buyer said in trying to buy trucks and road maintenance material he had been bounced from agency to agency.

An RFC official admitted that some unwanted stuff was lumped in with the desirable articles, in order to market them. However, it is at RFC that one gets an impression of a day-to-day, down-to-earth effort to sell surplus goods on its books. There are other agencies concerned also, but, as to RFC, this agency has found a very fair market open for surplus generating plants, several of which it holds.

THERE was installed at Jones Mill, Ark., a 35,000-horsepower steam generating plant. It was moved to Lake Charles, La., and, still later, ordered moved back to Jones Mill. The latter move was canceled. The plant is now at Lake Charles, 98 per cent complete, but never in operation. The RFC has another power plant at Lake Charles, Power Plant No. 1. It was to furnish power to the magnesium plant at that place. The magnesium plant is now shut down. For a year or so this plant has furnished some power to the Gulf States Utilities Company, but this takes only a part of the government plant's output. This is a small unit plant, 75,000 kilowatts, of 9 turbo-generator units.

Two have been sold by War Production Board direction, so that there is a total installed capacity at the Lake of 60,000 kilowatts. Much interest has been indicated in the various units, it is stated.

A larger plant, 110,000 kilowatts, was built to furnish power for a magnesium plant at Velasco, Tex., now also closed down at last report. The power plant is still partially operating, furnishing power for other industrial loads in the area. The RFC has still other plants, or had them when this was written.

A considerable government investment went into gas, but not comparable to that put into power development. The government bought gas where practicable, but has some small gas systems, supplying principally industrial plants, probably the largest being at Lake Charles. The RFC has about 25 miles of gas transmission lines at Velasco, and some local pipe lines here and there. These were installed where it was not feasible for a private utility to make installations for a shifting need.

Then RFC has four floating power barges, each of 30,000 kilowatts, mentioned earlier. One was still furnishing extra power to Jacksonville at last report, and three were sent abroad.

It is where publicly owned war surplus utilities exist in conjunction with war industries now closing that the greatest pressure is found for government ownership and operation as a postwar project. This is particularly true of the aluminum and magnesium plants, both of which require electric power on a very cheap basis to operate competitively. As to whether government power is cheap, much has been written. In any case, the present trend is for subsidy, if necessary, in this or some other guise, to permit the plants to continue in operation.

The government has had a discouraging experience in at least two fields of major war properties when it came to sell them. First, the war surplus steel plants in the West are not going like hot cakes. In fact, the government has them yet.

The big oil pipe lines built in this country also are not proving big sellers at this writing. What the story will be in aluminum is not yet clear. But there are some critical aspects of this situation, obviously. If the plants and facilities are not sold, and in some cases they are not economically feasible for a private buyer, the pressure will continue for their operation as a public venture, a yardstick proposition. And that stage is here.

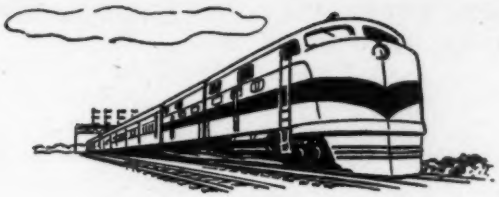
MVA or No MVA—That Is the Question

MEMBERS *of the Senate subcommittee investigating the Missouri Valley Authority Bill, S 555, in reporting adversely against the creation of the authority, found an argument in the sage counsel of William Shakespeare.*

At the end of its report to the Committee on Irrigation and Reclamation, the subcommittee said:

> To paraphrase Shakespeare, S 555 is—
> An act that blurs the grace of constitutional government,
> Calls it hypocrite, takes off the rose
> From the fair brow of the Golden West
> And sets a blister there, makes the pledge of Congress to the West
> As false as dicers' oaths; O, such an act
> As from the body politic of our nation plucks
> The very soul and makes of representative government
> A mere rhapsody of words.

The lines paraphrased are from Act III, Scene IV, of Hamlet, and are the words of Hamlet addressed to the queen after he had slain Polonius.



Electrification of Railroads In the Pacific Northwest

Since this will depend upon the relative costs of the different kinds of power, the surplus or idle electric power which will soon be available from the great Federal projects, seeking for a market may, in the opinion of the author, be offered to the railroads at rates they cannot afford to turn down.

By ERNEST R. ABRAMS

Not since the issuance of its report for the fiscal year 1941, during which it sold 848,561,158 kilowatt hours of electric energy for $1,874,322, has the Bonneville Power Administration, which markets the power produced at Bonneville and Grand Coulee dams, disclosed its volume of electric sales. But it has reported its revenues each year, from which it is estimated that total power sales in the 1944 fiscal year approximated 9,000,000,000 kilowatt hours. And, although four months have lapsed since the close of its 1945 fiscal year, operating statistics for that twelve months' period still remain a military or bureaucratic secret.

Perhaps because it requires great skill and effort to reveal in so confusing a manner the meager amount of real information about operations presented to the public in annual reports, our Federal power projects take from six to twelve months in their preparation. If privately owned electric utilities took that long to advise their security holders of annual operating results and financial condition, they would come in for pretty harsh treatment by the Securities and Exchange Commission and much well-deserved criticism from their stockholders. But, of course, business-managed electric utilities always are out to gyp the consuming and investing public, while politically managed power projects are ever pure in heart and seek only to serve the public interest.

As every reader of newspapers knows, this jump of 1,000 per cent in the Bonneville Power Administration's power sales in three years was due almost entirely to the vastly increased demands made upon it by privately owned industries turning out vital war materials and war plants established by the Federal government. And the Bonneville Power Administration, itself, recognized the tempo-

rary character of its 1944 load when it stated in its annual report for that fiscal year:

> Although revenues for fiscal year 1944 exceeded $20,000,000, a very substantial proportion of the present revenue is derived from service to war plants and establishments. Of the 1,010,262 kilowatts of total contract demand in active executed contracts, 733,600 kilowatts are in industrial contracts subject to cancellation and an additional 40,850 kilowatts are in very short-term industrial contracts. At the administration's basic rate of $17.50 per kilowatt year these cancelable and short-term industrial contracts involve annual revenue of $13,522,875. Under industrial contracts having cancellation provisions the total amount of cancellation or termination payments, assuming cancellations of all the contracts effective as of July 1, 1945, would be approximately $9,200,000.

With World War II at an end, these cancelable and short-term industrial contracts pose a major problem for the Bonneville Power Administration in the marketing of electric energy produced at the two dams. During the 1940 fiscal year, the power plant at Bonneville dam had an output of 208,571,158 kilowatt hours, compared with 3,488,873,922 kilowatt hours in the 1944 fiscal year. And the Grand Coulee power plant, which produced no power in the 1940 fiscal year, turned out 5,751,520,210 kilowatt hours in the 1944 period. Together, they generated about 65.5 per cent of all the power produced in hydro plants in the states of Oregon and Washington in the twelve months ended June 30, 1944.

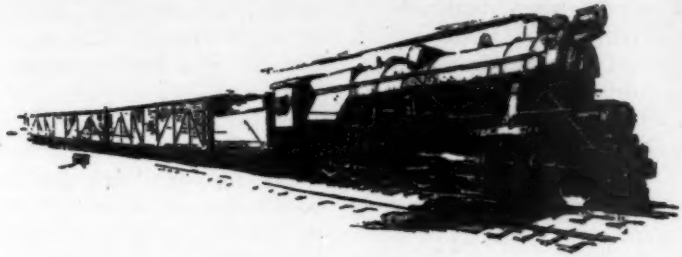
At the present time the aggregate of installed generating capacity at the two dams is 1,326,400 kilowatts with a theoretical maximum output of 11,619,264,000 kilowatt hours a year.

Even in the 1941 fiscal year, before the Grand Coulee power plant was turning out power for public sale, the Bonneville Power Administration was finding it difficult to peddle its electricity.

Since the region within transmission range of Bonneville dam was amply supplied with hydro-generating capacity, practically no available market was unserved. And while some of this publicly generated power was sold to near-by private utilities and to a few newly established industries, the great bulk of it could find no outlet.

But the outbreak of hostilities in Europe in 1939, and especially the Jap attack on Pearl Harbor in late 1941, vastly stimulated the demand for aluminum and magnesium in the production of which large quantities of electric energy are consumed. So the government built, or subsidized private interests which would build, electrometallurgical and electrochemical plants in the Northwest, and all during the war Bonneville and Grand Coulee power flowed in large volume to these manufacturers and other producers of war goods.

With the close of hostilities last August and the consequent slackening of demand for these light metals, the Bonneville Power Administration again found itself with a surplus of power and the need of stimulating new demands or markets. One possible outlet for this surplus was the customers of privately owned utilities within transmission range of the two dams. Having built more than 2,500 miles of high-tension lines throughout the area, most of the privately served communities of Oregon, Washington, and northern Idaho are now within relatively short distances of the administration's network and could be reached at comparatively small cost.



Study of Motive Power

"RAILROAD mechanical engineers have given long and serious study to the subject of motive power, which some of them consider the heart of the transportation problem. During the past twenty-five years great savings have been made in fuel consumption through improvements in combustion by steam locomotives. Types of Diesel locomotives have been improved, and the availability and reliability of large blocks of electric power have been increased."

THE laws of both Oregon and Washington lend themselves, moreover, to this raiding of privately served areas. Due in considerable part to Federal propaganda for public ownership of electric service systems before the war and to pressure on their legislatures by administration spokesmen from Washington, both states enacted laws permitting the organization of public utility districts with the right to condemn privately owned facilities for rendering electric service and to issue revenue bonds to provide the funds necessary for their acquisition. In the main, this set of circumstances is responsible for the renewed efforts of a group of public power districts in Washington to acquire Puget Sound Power & Light Company.

But in addition to attempts to capture the markets served by private power companies and to stimulate industrial expansion in the region, the Bonneville Power Administration appears to be casting envious eyes at the electrification of the great bulk of railroad mileage in the Pacific Northwest which still employs steam motive power. Already, the Great Northern Railway has electrified 72 miles of main line and the Chicago, Milwaukee, St. Paul & Pacific 660 miles, although neither of these roads get their power from the Bonneville Power Administration.

THERE was considerable agitation throughout the country some twenty-five years ago for electrification of all railroads, but the amount of main-line mileage motivated by this type of energy represents only some 2 per cent of all the main-line mileage in the United States today, and in every instance there were special reasons for

its adoption. In many of our major railroad centers where hundreds of trains arrived and departed daily, smoke proved such a nuisance that ordinances requiring electrification were passed. Then, too, where traffic density demanded increased capacity of lines or an increase of speed with an increase of power, electrification offered the most economical and efficient solution. Largely for these reasons, all of the metropolitan lines of the Long Island Railroad, the New York city lines of the New York Central and New Haven roads, and the New York-to-Washington lines of the Pennsylvania Railroad, were converted from steam to electric operation.

In addition, smoke and fumes caused such inconvenience to passengers on trains moving through tunnels that electrification of these short strips was adopted long ago. On July 1, 1895, the Baltimore & Ohio opened its Belt Line at Baltimore to traffic. Included were 9 tunnels, the longest of which was 7,300 feet, and since the average grade was 0.9 per cent and the maximum 1.55 per cent steam, helpers would have been required, thereby doubling pollution of the tunnels. The use of electric locomotives, however, not only eliminated all tunnel pollution but obviated the need of helpers.

LARGELY to eliminate the smoke and fumes incident to steam operation, the Boston & Maine Railroad, which crosses the Berkshire hills in northwestern Massachusetts by means of the 5-mile Hoosac tunnel, electrified 7.92 miles of double-track line between North Adams and Hoosac tunnel station and placed it in service in May, 1911. And in connection with its construction of the long Cascade tunnel which was opened in January, 1929, the Great Northern Railway electrified 72 miles of line between Wenatchee and Skykomish, Washington.

By far the largest single instance of railroad electrification in the country is the 660 miles along the Milwaukee road's extension from the Twin Cities to Tacoma, but here, too, special conditions dictated electrification of part of the extension. For one thing, here was an unusually long extension of an existing railroad to be newly constructed and sections of it could, therefore, be designed specifically for electric operation. For another, many additional locomotives had to be bought and they might as well be electric as steam. And, for a third, only those sections of the line traversing mountainous country were electrified. Yet, railroad mechanical engineers are by no means in agreement that electrification of this 660 miles of line is more efficient and less costly from an operating standpoint than steam.

IN 1935, a committee of eminent engineers made a comparative study of steam and electric motive power on a 200-mile stretch of road in the Pacific Northwest. This mileage ran through rough country with grades so steep that both steam and electric locomotives had to have helpers. All factors of cost were carefully considered and tabulated, and, as a result of this study, it was concluded that

1. If electric locomotives displaced steam and absorbed the resultant fixed charges on the investment in steam locomotives, with a traffic density of 44.8 train miles per mile of route per day, electric energy would have to b

priced at 2.6 mills per kilowatt hour to equalize the costs between electric and steam operation; and if the traffic density was only 30.2 train miles per mile of route per day, electric operation would cost $1,278,095 more annually than steam.

2. If the value of displaced steam locomotives was disregarded, power at the rate of 6.174 mills per kilowatt hour, with a traffic density of 44.8 train miles per mile of route per day, would balance costs between electric and steam; but with 30.2 train miles per mile of route per day, steam operation would cost $1,007,630 less per annum.

3. A net benefit would not result from electrification unless there were great density of traffic and very low rates for power, and any broad extension of electric motive power over trunk lines could not be anticipated.

THE traffic-density levels were not just picked at random. They were used because during the peak year of 1926 this 200-mile stretch of line carried approximately 44.8 train miles per mile of route per day, while the average for the entire country, including all Class I railroads, was but 13.7 train miles per mile of route per day. And in 1934 this 200-mile stretch of line had a traffic density of 30.2 train miles per mile of route per day, while the overall average for the country was 10.2 train miles per mile of route per day.

The conclusions derived from this careful study appeared to meet with the approval of railroad managements generally, not only those serving the dense traffic areas of the East but also those serving the West and Northwest where density of traffic is lower. They held forth little hope that density of traffic on the main trunk and transcontinental lines of the country could meet the conditions set forth in the study.

Railroad mechanical engineers have given long and serious study to the subject of motive power, which some of them consider the heart of the transportation problem. During the past twenty-five years great savings have been made in fuel consumption through improvements in combustion by steam locomotives. Types of Diesel locomotives have been improved, and the availability and reliability of large blocks of electric power have been increased.

But despite these improvements in all types of motive power, the choice of the variety employed has generally been determined by the original cost of each, together with the facilities necessary for their operation, and their relative operating efficiencies. Very definitely, the Diesel switch engine is winning in that field, but on the main lines the struggle still goes on.

¶ *"DURING the 1940 fiscal year, the power plant at Bonneville dam had an output of 208,571,158 kilowatt hours, compared with 3,488,873,922 kilowatt hours in the 1944 fiscal year. And the Grand Coulee power plant, which produced no power in the 1940 fiscal year, turned out 5,751,520,210 kilowatt hours in the 1944 period. Together, they generated about 65.5 per cent of all the power produced in hydro plants in the states of Oregon and Washington in the twelve months ended June 30, 1944."*

IN commenting on the future of railroad motive power, the committee of engineers which studied the 200-mile stretch of road in the Pacific Northwest in 1935 made the following statement, which railroad economists say still holds good:

> Because of the advantages that can be gained in no other way, electrification is certain to be carefully considered where conditions are reasonably favorable. However, the likelihood of wholesale electrification of American railroads freely predicted some fifteen years ago cannot be expected. The inroads of competition by other transport agencies has reduced traffic volume; the extensive improvement in steam locomotive efficiency has tended to offset some of the savings; the introduction of internal combustion engine power (Diesel), permitting some of the advantages of electric traction, with the retention of the flexibility of a mobile power plant, has furnished an economical motive power for areas of comparatively low traffic density.

Even if the brave plans now being laid to keep our national income and the value of manufactured products at wartime levels are successful, the railroads of the country are still likely to suffer through the loss of a considerable volume of traffic to competitors on the highway, in the air, and on the water. How much they can retain will depend largely upon the level of operating costs, the quality of service they can offer, and the extent to which tariffs can be reduced to meet competition. Accordingly, electrification for the displacement of steam and Diesel locomotives will, as it always has, be determined on the basis of relative costs. And it is certain that roads serving the Pacific Northwest will give serious consideration to any proposed method of reducing operating costs and improving service.

LOOKING at electrification from another angle, it is inconceivable that government-owned power projects of the type of Bonneville and Grand Coulee will ever be permitted by public-power-minded officials in Washington to let their electric generation facilities stand wholly or partially idle. Since these facilities were built with the funds of all the people—people with votes—and every kilowatt hour that can be sold at any price will bring in just that much more added revenue, the time may not be far distant when the Bonneville Power Administration, unable to find a more profitable market for its surplus power—or any market at all, for that matter—will offer electric energy to the railroads of the Northwest at rates they cannot afford to turn down.

Telephone "Canteen"

WHEN the aircraft carriers ENTERPRISE and MONTEREY *docked in New York for Navy Day exercises, their officers and men swarmed down to a warehouse hurriedly equipped with 25 telephone booths just for their use.*

An employee of the New York Telephone Company was on hand with hundreds of dollars in nickels, dimes, and quarters to make change. None of the telephones could be used for incoming calls.

Also near by the Western Union Telegraph Company had set up a special office for the men.

Government Utility Happenings

THE House of Representatives has again refused to follow the "economy-minded" objectives of its own Appropriations Committee in passing the recent First Deficiency Appropriations Bill. By amendments the House restored, among other items originally excluded by the committee, various rivers and harbors appropriations totaling $128,000,000, including 13 multiple-purpose projects with power-producing features (listed below). No attempt was made on the floor of the House, however, to restore various items originally sought in the budget for the Bureau of Reclamation.

The House Appropriations Committee had again refused money for Federal power lines. In its written report on the supplemental appropriation bill the House committee refused to approve funds for power market surveys and construction of transmission lines proposed by the Reclamation Bureau. The committee took the position that "the government should not go into the business of constructing transmission lines to market power developed at government dams."

In its report to the House on Army Engineers' proposals for various rivers and harbors projects, the committee explained that "a number of the undertakings should have further investigation, particularly those which contemplate commencing construction of so-called multipurpose dams entailing ultimate separate costs of as much as $130,000,000. The committee is reluctant to recommend them without further inquiry into the merits of features not essential to protection against floods."

In connection with Reclamation Bureau appropriations, the committee took the position that the government should not sell electric power in competition with private enterprise. For example, while the committee provided $10,269,000 for the fiscal year 1946 in appropriations for work on the Missouri river basin project, it refused to include an item of $515,700 for the purpose of making studies of power markets and transmission lines.

RECLAMATION BUREAU'S budget was cut from $99,300,000 to $77,200,000. While some of these Reclamation

Project	*Estimated Cost*	*Initial Kw. Pwr. Inst.*	*Cost of Power*
Buggs Island Reservoir, Va.-N. C.	$30,900,000	85,500	$ 5,660,000
Clark Hill Reservoir, Ga.-S. C.	35,300,000	160,000	11,005,000
Allatoona Reservoir, Ga.	17,400,000	66,000	3,220,000
Narrows Reservoir, Ark.	6,470,000	17,000	1,253,000
Blakely Mountain Reservoir, Ark.	11,080,000	42,000	2,647,000
Norfolk Reservoir, Ark.	27,500,000	70,000	4,676,000
Bull Shoals Reservoir, Ark.	47,000,000	126,000	6,171,000
Denison Reservoir, Tex.-Okla.	59,315,000	70,000	8,094,000
Fort Gibson Reservoir, Okla.	21,435,000	45,000	6,914,000
Garrison Reservoir, N. D.	130,000,000	80,000	5,900,000
Wolf Creek Reservoir, Ky.	52,000,000	135,000	9,522,000
Dale Hollow Reservoir, Tenn.-Ky.	22,739,000	36,000	5,075,000
Center Hill Reservoir, Tenn.	25,400,000	90,000	6,200,000

projects will entail power, the committee's bill denied Interior Department authority it sought most of all. This was the authority to use funds for power market surveys and for the construction of transmission lines by the Reclamation Bureau. The Interior Department is still smarting under the refusal of Congress in two consecutive sessions to authorize the building of transmission lines in the Shasta dam area in California.

This year Interior pointed out that the Pacific Gas and Electric Company had refused to transmit Shasta energy on a common carrier basis to the city of Roseville, California, where the Interior had contracted to deliver power. This was cited as reason for authorizing some $6,000,000 to be used for power lines in the Central valley area generally. The House committee stood by its former policy, however.

As finally approved by the House, the Appropriations Bill did, however, include part of the Bureau of Reclamation's program for completing lines from Shasta and Keswick through Oroville to Sacramento. The Shasta-Oroville line was commenced by the Bureau of Reclamation over a year ago on the initiative of Secretary of Interior Ickes from unexpended funds.

* * * *

It is reliably reported that Commissioner of Reclamation Harry W. Bashore is scheduled to quit office January 1, 1946. Bashore took the lead in working out a settlement of differences with the Army Engineers for the development of the Missouri river. The result was a unification of the Army's so-called Pick plan with the Reclamation Bureau's Sloan plan. The former was originally based on navigation in the Missouri and had drawn the objection of the Reclamation Bureau that if enough water went down the Missouri to take care of the 9-foot channel below Sioux City there would be insufficient water for irrigation for the upstream. The Reclamation Bureau's Sloan plan, originally based on the primacy of irrigation, was subsequently modified to compromise the differences between the two departments, as a result of which work is now going ahead on the Missouri.

The late President Roosevelt once commented that Army-Reclamation progress on the unified plan would not foreclose eventual establishment of a Missouri Valley Authority to take over development.

* * * *

The electrical contractors are carrying their fight with REA to Congress. For several weeks the National Electrical Contractors Association has been quarreling with REA Administrator Wickard against two REA policies affecting its members: (1) refusal to permit REA co-ops to receive or accept bids from electric construction contractors who have been or are performing similar contracts for privately owned utility companies; (2) directing REA co-ops to attempt to negotiate with several lower bidders in an effort to obtain lower contract prices than those offered by the lowest bidder. At its forty-fourth annual convention in Cleveland on October 30th, the association passed a resolution denouncing such practices, which Wickard admitted to be a fact in a memorandum to the Secretary of Agriculture.

The association's counsel, O. R. McGuire, charged that such black-listing and "chiseling" practices are unlawful, in a subsequent letter to Secretary Anderson. Wickard's memorandum defended at least REA's black-listing of contractors (doing privately owned utility jobs) on the theory that the relationship between a contractor and his client is a confidential one, similar to that of attorney and client. Hence the same contractor should not attempt to serve two clients who might have conflicting if not competitive interests. McGuire ridiculed such a theory as unsound and unprecedented. But the Secretary of Agriculture seemed disposed to uphold Wickard.

Result: The contractors' association was reported to be carrying the fight over

the Secretary's head and requesting that Congress write into Agriculture appropriation bills provisions which will forbid the continuation of such policies. Senator McCarran (Democrat, Nevada) has indicated his willingness to start the ball rolling.

* * * *

SECRETARY of the Interior Harold L. Ickes recently submitted to Governor Earl Warren of California and other officials a report, later to be transmitted to the President and Congress, presenting a long-range development plan under which the Reclamation Bureau would continue its activities on the Central Valley project. The 15-year program provides that the bureau would complete projects now under construction and undertake new water conservation developments in irrigation, flood control, and power production. The cost of building the multipurpose projects was estimated at close to $2,000,000,000.

As to power developments, the Secretary stated that the hydroelectric and other generating plants to be operated in connection with these projects would produce more than 8,000,000,000 kilowatt hours for use in irrigation and in expanding industrial areas.

* * * *

THE Murray MVA Bill (S 555) faces another committee hearing. Already disapproved by the Senate Commerce Committee and the Committee on Irrigation and Reclamation, this valley authority bill was scheduled to be considered by the Senate Agriculture and Forestry Committee. Senator Thomas (Democrat, Oklahoma), chairman, was expected to initiate hearings sometime after December 1st. They may possibly be delayed until after the first of the year.

* * * *

CHAIRMAN Lyle H. Boren (Democrat, Oklahoma) of the House Interstate Commerce subcommittee, which has been holding hearings on the Public Utility Holding Company Act of 1935, has stated that the Christmas recess seemed an appropriate time to print and examine the hearings record to date. It was expected that the hearings would be resumed after the first of the year when the executives of holding companies will be called for testimony, as will also Leland Olds, acting chairman of the Federal Power Commission, Bonneville Administrator Paul J. Raver, and Guy C. Myers, financial agent.

Mr. Boren has pointed the hearings principally at sales of utilities, of which the law required holding companies to divest themselves, to tax-free public organizations. He has named Mr. Myers as active in such sales.

* * * *

WILLIAM E. OWEN, chairman of a joint committee representing 17 Wisconsin and Minnesota Rural Electrification Administration coöperatives, recently announced that their bid of $4,979,000 for purchase of the Wisconsin Hydro-Electric Power Company and the Eastern Minnesota Power Company had been accepted.

The sale, which must be approved by the Securities and Exchange Commission and the Wisconsin Public Service Commission, covers the purchase of 8 hydro-generating plants, 1 Diesel generating plant, 293 miles of transmission lines, and 901 miles of distribution lines, all in Wisconsin. Mr. Owen said that the sale already had been approved by majority stockholders of both companies, but added that a minority objection might be expected, in which case the SEC would order a hearing.

Mr. Owen said that the Wisconsin share of the bids was $3,449,000 and Minnesota $1,530,000. The Minnesota properties include 178¼ miles of transmission lines and 500 miles of distribution lines. About 8,000 Wisconsin and 5,000 Minnesota customers are served by the two.

Sale of the properties follows an SEC order which directed the Manufacturers Trust Company of New York, the holding company controlling both, to divest itself of the electric facilities.

APPOINTMENT of Robert B. Elliott as chief of the Bonneville Power Administration's utilization section was announced last month by Administrator Paul J. Raver. Before joining the Bonneville staff Elliott served with the War Production Board as head of the Office of Civilian Requirements for Oregon and southern Washington. He was also in charge of the government division, WPB; chairman of the community facilities committee; and member of the area production urgency committee.

Elliott brings to Bonneville a background of eighteen years' experience in the utility sales field including five years as sales promotion and advertising manager for Portland Gas & Coke Company.

In his new position he will direct and coördinate plans and programs to increase the use of Columbia river power for residential, rural, and commercial purposes, agricultural and irrigation development, space heating, and research.

The promotional, investigational, and educational work of the section will be carried out through trained utilization representatives, home economists, technical experts, and engineers in the Portland office and in Bonneville's district offices in Eugene, Seattle, Spokane, Wenatchee, and Walla Walla, Elliott said. Outlining plans for development of a broad utilization program to assist distributors of Columbia river power in promoting increased farm, home, and commercial power use, Elliott said that close contact would be maintained with Northwest educational institutions, manufacturers, consumer organizations, and distributors.

"Working in coöperation with these agencies, we plan to organize electric equipment demonstrations, including all-electric homes, farm power equipment, use of electricity for food production, sprinkler irrigation, space heating, and commercial purposes," Elliott stated.

Bonneville's utilization program also will include organization of cooking schools, research in irrigation methods and equipment, and analysis of electric space-heating markets in coöperation with architects and builders.

THE Senate, without debate, last month passed unanimously a House-approved bill providing for current financial control and annual scrutiny by Congress of more than a hundred government corporations with total assets of $29,400,000,000, in which more than $13,000,000,000 of Federal funds are invested.

In effect, the measure, known in the Senate as the Byrd-Butler Bill, amounts to an effort on the part of Congress to recapture its control over the public purse—a prerogative virtually relinquished by Congress in recent years. The bill was sent to the White House. The President, last June, informed the interested committees of Congress that he favored the legislation.

The bill provides for an annual businesslike budget for each wholly owned government corporation, to be submitted to the President through the Bureau of the Budget and transmitted by him to Congress "as a part of the annual budget."

The bill further provides for an annual commercial-type audit of all government corporations by the Comptroller General of the United States, and a report by him to Congress of their operations, financial condition, and compliance with the law. It also requires the Secretary of the Treasury to approve the depositories, financing, and government security transactions of all government corporations.

The budget provisions of the bill do not apply to mixed ownership corporations; that is, those in which a part of the capital stock is owned by the government and part by others. The audit and Treasury control requirements do apply to mixed ownership corporations as long as the government has capital invested in them.

The Senate was told by Senator Hugh Butler (Republican, Nebraska) that the provisions of the bill, which had the approval of Comptroller General Lindsay Warren as well as the President, "should remove any fear that any government corporation would be put in a strait jacket."

Wire and Wireless Communication

THE American Telephone and Telegraph Company on November 30th announced that reductions in rates for interstate services amounting to over $20,000,000 annually have been agreed upon with the Federal Communications Commission to be effective February 1, 1946.

Approximately $17,500,000 of this reduction is in long-distance telephone rates, principally for distances between 340 and 2,140 miles.

Rates for teletypewriter exchange service for distances of more than 350 miles will also be reduced about $1,000,000 annually. In addition, rates for private line telephone, teletypewriter, and telephotograph are also being reduced at the longer hauls with savings to the users of these services of approximately $1,700,000 annually.

In commenting upon these reductions, President Walter S. Gifford of AT&T said that they had been occasioned by discontinuance of accruals to the company's employment stabilization fund. These have been made since the latter part of 1943 to take care of maintenance expenses which would have been incurred during the war years had it not been for lack of man power and materials. Viewing Bell system earnings as a whole, he said there is nothing in the present or near future outlook that would justify any rate decreases whatever; in fact, the level of the system's earnings in recent years has been the lowest in its history, except for the worst depression years.

However, the reductions were made on the showing of the interstate traffic by itself, which is under the exclusive jurisdiction of the FCC. Earnings on the interstate portion of the business have been abnormally affected by the extraordinary volume of long-distance calls and by the temporary overloading of the long-distance plant.

Mr. Gifford also stated that looking to the future he was pleased with the commission's appreciation of the tremendous postwar program which lies ahead of the Bell system companies. This program may well mean securing over $2,000,000,000 in new money during the next decade and will require adequate earnings for the system as a whole if the program calling for more jobs, more materials, and better service is to be accomplished.

THE Bell telephone system needs to earn at least from 6½ to 7 per cent on its total capital investment in order to attract from investors the large amounts of new capital required, according to Leroy A. Wilson, vice president of AT&T, in an article in the current issue of the *Bell Telephone Magazine*.

Looking ahead for ten years, Mr. Wilson foresees a possible new capital requirement for more than $2,000,000,000—nearly as much as the Bell system has had to obtain in the last twenty-five years.

There are many thousands of jobs ahead in the manufacture and installation of plant to provide new and more and better services for the public, Mr.

Wilson pointed out. Included in the system's definite plans are such items as taking care of the 2,000,000 presently unfilled orders for telephone service; restoring plant margins to prewar standards; adding another 1,000,000 telephones in rural areas to the 1,000,000 already in service; expanding the program of fast and accurate dial service; adding hundreds of thousands of miles of new long-distance circuits; creating a nation-wide network of coaxial cables which will transmit television programs as well as telephone messages; eliminating old telephone instruments and introducing new types; greatly enlarging the scope of radiotelephone service; and providing for the normal future growth of the business. Mr. Wilson said:

> Earnings high enough mean that the Bell system can go forward and improve its service, increase employment, pay good wages, develop further ways and means of increasing the value of the service, and in the long run continue to reduce its cost. Experience proves it. It is because the Bell system as a whole has obtained enough money to do its job well that it has been able to give its customers much more for their money.

The money invested in the Bell system, Mr. Wilson reported, has increased from about one and one-third billion in 1920 to a total of more than $4,000,000,000 at the end of 1944. About two-thirds of this $4,000,000,000 has been invested by stockholders, who now number more than 680,000. The remaining one-third is borrowed money. It is upon this entire capital structure, composed of both stock and bonds, that the need for earnings of at least 6½ to 7 per cent is based.

THE Bell Telephone Company of Canada will spend $28,200,000 in 1946 to extend and improve its telephone facilities. The outlays will be part of the company's $50,000,000 extension program planned for the next few years. A breakdown of the planned expenditures in 1946 follows:

For subscribers' station equipment, $9,300,000; outside plants in exchange areas, $6,850,000; central office equipment, $4,950,000; land and buildings, $2,170,000; long-distance facilities, $3,000,000; right of way, $262,000; miscellaneous, $1,660,000.

Expenditures in Toronto are placed at $7,000,000 and for Montreal, $5,000,000 in 1946.

* * * *

SECRETARY of Treasury Fred M. Vinson has responded somewhat critically to the proposal that Federal loans should be made for rural telephone service as provided in two bills now before the House Interstate and Foreign Commerce Committee. Vinson's letter to Chairman Lea of the House group reviewed HR 1278, which would set up a Rural Telephone Administration, and HR 1665, which would amend the Rural Electrification Act by authorizing loans by REA for installing and improving rural telephone as well as rural electric service. After reciting the provisions of HR 1278, Secretary Vinson's letter stated:

> Section 3(a) of HR 1278 would further provide that the rate of interest on sums borrowed by the administrator shall be 1⅛ per cent per annum. If this method of financing is adopted, the department believes that the computed rate of interest on the public debt represents a more accurate index of the cost of borrowing money and suggests that the computed rate of interest for the end of the fiscal year preceding that in which the transaction occurs be used to determine the rate of interest on loans to the administrator. The computed rate of interest on the public debt is the average annual interest payable on all outstanding indebtedness as of a particular date. That rate at the close of each of the past few fiscal years has been as follows:
>
> | | |
> |---|---|
> | June 30, 1940 | 2.583% |
> | June 30, 1941 | 2.517% |
> | June 30, 1942 | 2.285% |
> | June 30, 1943 | 1.979% |
> | June 30, 1944 | 1.929% |
> | June 30, 1945 | 1.936% |
>
> Section 4 of the bill would authorize the administrator to make loans to carry out the provisions of the legislation. Such loans would bear interest at the rate of 1⅛ per cent per annum. The rate in the bill as it now stands is less than the computed rate of interest on the public debt at the present time and would in effect amount to a subsidy. The department believes that a fair rate of interest on loans by the Rural Telephone Administrator would be the computed

rate of interest on the public debt plus a differential at a rate to be fixed by the Congress to cover the estimated cost of administration, potential losses, and other contemplated expenses.

COMPARING the two bills, Secretary Vinson stated that HR 1665 was, in his opinion, preferable since it would authorize an existing agency (REA) to make the necessary loans, rather than set up an entirely new agency for that purpose. However, as to both bills, the Vinson letter concluded:

> Finally, since the two bills would appear to involve substantial expenditures, they should be considered in light of the heavy demands on the Treasury which have grown out of the war and the prospect of further large demands growing out of postwar readjustments. The credit resources of the government must be conserved for those important purposes.

* * * *

NATIONALIZATION of cable and wireless circuits within the British commonwealth, recommended at a commonwealth meeting at London in the summer of 1944, a year before the Labor party came into power in Britain, has been agreed to by all the commonwealth governments except that of Australia, Acting Prime Minister Ilsley told the House of Commons recently. This form of public control of external communications within the commonwealth was also agreed to at a commonwealth telecommunications council held in London last July. Recommendations made at that meeting included public ownership of overseas telecommunications services of all the commonwealth governments and the replacement of the existing commonwealth communications council by a new board with wider functions, also financial contributions by members of the commonwealth for maintenance and use of the cable system.

Canada participated at a conference between the commonwealth governments and the United States, held in Bermuda last month, dealing with questions of telecommunications between United States and British commonwealth interests. Delegates representing the Canadian government and Canadian Telegraph Company representatives attended the conference.

* * * *

THE United States and the nations of the British commonwealth recently were reported to be making news in the Bermuda telecommunications conference. When this conference started last month all the delegates agreed that the cost of sending messages between the United States and the British commonwealth was, as one delegate described it, "sometimes exorbitant and almost always inconsistent." Now the conference was agreed that, starting on April 1st, it should cost no more than 30 cents a word to send full-rate cablegrams from the commonwealth countries to the United States.

This means that full-rate messages between the United States and the commonwealth nations will cost 30 cents a word, deferred messages will cost 15 cents, and night letters will cost 10 cents. While these rates are not so low as the American proposal for a 20-cent ceiling on full-rate messages, they are considerably lower than those that have prevailed.

The new agreement will not affect the rates between London and New York, which are already under an agreed ceiling for the future, but its effect on messages to and from other points in the commonwealth may be judged from rates that now prevail on messages from the following points to New York: South Africa, 50 cents; British East Africa, 76 cents; Togoland, 94 cents; British Somaliland, 83 cents; British Gold Coast, 90 cents; Malay states and Singapore, 89 cents; Australia, 60 cents; India, 46 cents; Hong Kong, 88 cents; and New Zealand, 58 cents.

THE rate structure in the past has been in what the head of the Indian delegation, Sir Gurnath Bewoor, described as a "chaotic state." These rates, he pointed out, vary sometimes according to the route followed, sometimes according to whether the message is sent by

cable or wireless, sometimes to cater to special groups, often in accordance with the pressure exerted by certain powerful interests.

The delegates in Bermuda, however, brought a semblance of order into the rate structure. They accepted the principle that the United States should be able to establish direct radio circuits to several points in the commonwealth, notably Australia, New Zealand, and India.

One other controversial point was straightened out among the various American and commonwealth telegraph companies. It was agreed that in large countries—the United States, Canada, Australia, South Africa, and India—the company transmitting an international message within these countries should get 4 cents a word and in smaller countries, such as the United Kingdom, 2.5 cents a word. This, however, comes out of the original cost of the message and is not passed on to the general public.

In addition to the businessman engaged in world-wide commerce and the general public, newspapers and news agencies made considerable progress in their fight for low ceiling rates for press messages. The British offered to do much better than the United States in this field, proposing a flat sterling penny a word (1.67 cents). The United States, after conferring with American commercial companies, agreed on 3 cents a word as the "ultimate objective" for these messages and on 6.5 cents a word as the ceiling between the United States and Empire points for the present.

* * * *

THE Illinois Bell Telephone Company on November 25th reported that service was normal following the settlement the previous day of a strike by 8,900 long-distance operators of the Illinois Telephone Traffic Union.

Under the terms of the compromise, both union and company agreed to accept the recommendation of the National Telephone Commission of the War Labor Board for a $4 weekly wage increase.

In addition, the company guaranteed a minimum wage increase of another $2 a week to become effective not later than February 1, 1946, and agreed to open negotiations for a new wage scale. The union promptly asked a $10 weekly increase in addition to the $4 granted. If settlement of the demand is made before February 1st the $2 would be included.

Adjusted bills rebating about $200,000 will be sent to Illinois telephone subscribers whose service was disrupted by the strike, John D. Biggs, chairman of the Illinois Commerce Commission, announced recently. After a conference with officials of the Illinois Bell Telephone Company, Biggs said the company offered voluntarily to give full credit to customers of manually operated exchanges who experienced interrupted local service.

Billing under the agreed plan was said to be in progress.

* * * *

EXCEPT for telephones, New York's huge new Idlewild airport on Jamaica bay, Queens, is ready for limited commercial air-line operations, John McKenzie, commissioner of marine and aviation, said recently. There were no telephones, Mr. McKenzie declared, because Local 3 of the International Brotherhood of Electrical Workers, American Federation of Labor, had left a gap of 400 feet in the underground conduit system.

"Bad weather" had held up work on the gap, according to John Kelly, business manager of Local 3. Other interested parties, however, were more inclined to blame a jurisdictional dispute in which Local 3 had sought for five months the right to pull the telephone cables through the 5,600-foot conduit system.

Although Local 3 asserted its members should install the cables, the New York Telephone Company said in a statement on November 30th that it has "a contractual arrangement of long standing" with the independent United Telephone Organizations, made up of its own members, to do the work. The telephone company intended to abide by its agreement with the UTO, the statement said.

Financial News and Comment

By OWEN ELY

Earnings in 1946

ATTENTION has been called to the possibility that our estimates of the electric utilities' potential tax savings in 1946, based on the new Revenue Act, might be misconstrued as a forecast of actual 1946 earnings. The table in the previous issue of this department (pages 712-14) showed the estimated tax savings (for companies on which data were available). The figures were worked out on a per-share basis and placed alongside the reported share earnings before such savings. It was specifically pointed out, however, that "it is dangerous to assume that 1946 earnings might approximate the sum of the two figures. . . . Loss of wartime industrial business, heavier operating expenses, and other factors, may tend to offset tax savings." Obviously, the tax savings calculations, being based on earlier earnings rather than 1946 figures, may not prove accurate next year if the earnings base is lower.

In this connection we reproduce herewith a copy of a letter from President C. W. Kellogg of the Edison Electric Institute to President John D. Biggs of the National Association of Railroad and Utilities Commissioners. (The NARUC convention was just held in Miami Beach, December 4th-7th.)

KELLOGG VIEWS ON REPEAL OF EXCESS PROFITS TAX

November 21, 1945

Hon. John D. Biggs, President
National Association of Railroad and
Utilities Commissioners
c/o Illinois Commerce Commission
Greenville, Illinois

Dear Sir:

We are advised through a statement in the press that one of the matters to be discussed at the forthcoming convention of your association at Miami is the effect, if any, of the recent repeal of the Federal excess profits tax, effective from and after January 1, 1946, in making possible reductions in electric rates due to the supposed resulting improvement in net earnings.

While we realize that there is great variation among individual companies, our study of the electric light and power industry as a whole indicates that, due to the falling off in electric consumption incident to the end of the war, to the increased cost of fuel, and to the fact that under the provisions of the Revenue Act the elimination of the excess profits tax results in an increase in the income and surtaxes, the electric utility companies will be hardly any better off in distributable net to their stockholders in 1946 than they were in the base period 1936-39, both inclusive.

Since the end of the European war, and, of course, more rapidly since the end of the Japanese war, the consumption of electricity has, week by week, decreased below the corresponding week of the preceding year at a continually increasing pace, so that, as the end of 1945 approaches, we find the level of energy consumption nearly down to what it was at the corresponding period in 1942; and the process seems likely to continue further.

It is our opinion, therefore, that the gross revenues of electric utilities in 1946 will be approximately what they were in 1942. (They may well be as low as 1941, or even 1940.) For the purpose of comparison I have set down below the actual financial results of the electric light and power industry as a whole for the average of the base period 1936-39, both inclusive, for the year 1942, and also for reference for 1941.

In the latter years, instead of taking income and excess profits taxes as actually paid, I have simply computed Federal income taxes as equivalent to about 30 per cent of the income subject to such tax, that being the average ratio which, as a whole, the present rate of corporation income and surtaxes produces for the electric utilities. I have also allowed for an increase of 20 per cent in cost of fuel in 1946 compared to 1942, which I think you will agree is a very conservative figure. All of the foregoing leads to the following statement:

FINANCIAL STATEMENTS ELECTRIC LIGHT AND POWER COMPANIES
(Millions of Dollars)

	Base Period 1936-39	*Actual, through Taxable Income* 1942*	1941
Gross	$2,027	$2,609	$2,467
Deductions			
Operating expenses	766	1,002	947
Depreciation	222	291	279
Local taxes	205	231	226
Misc. Federal taxes	46	64	64
Interest and amortization	339	317	312
Balance	449	704	639
Other income			
Operating	59	62	55
Nonoperating	56	66	73
Taxable income (Federal)	564	832	767
Federal income taxes	65 (11.52%)	250 (30%)	230
	499	582	537
Increased fuel cost (20%)	0	57	50
Balance for dividends and surplus	499	525	487

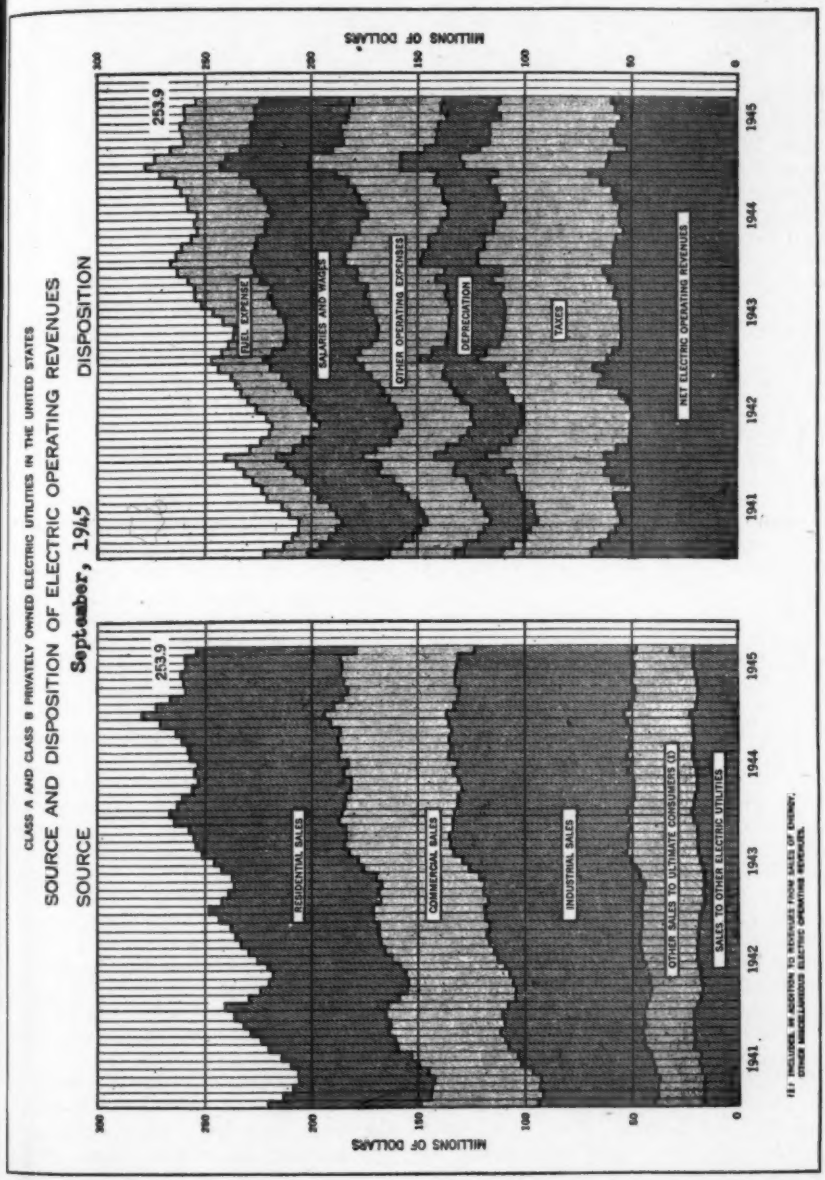
*As a measure for 1946.

These figures indicate that, as a whole, the net amount distributable as a return on investment will be about the same in 1946 as it averaged in the last four prewar years. Since the excess profits tax for the future has ceased to be an issue, due to the passage of the recent Revenue Act, it need not enter a present discussion of rates; but it seems most important to realize that its repeal will synchronize with a falling off in business and an increase in costs of such magnitude that no substantial change in the grand total of return on investment will be likely to result from its repeal next year.

Very truly yours,
C. W. KELLOGG,
President,
Edison Electric Institute.

In the twelve months ended August 31, 1945, total electric revenues of A and B utilities approximated $3,164,443,000, so that if revenues next year drop to the level of 1942, as forecast by Mr. Kellogg, it will mean a reduction of about 18 per cent. This estimate could turn out to be a little on the high side unless there is a considerable further decline in industrial activity due to strikes and reconversion difficulties. So far as the postwar trend thus far is obtainable, the results do not appear very unfavorable. An August bulletin published by the Federal Power Commission shows that in that month industrial kilowatt-hour sales were down 9.2 per cent, but industrial revenues fell only 4.3 per cent. Moreover, the latter decline was more than offset by gains in residential and commercial revenues of 6 per cent and 6.6 per cent, respectively. Total revenues from sales of electric energy showed a gain for the month of 1.4 per cent, and net income for the month was reported as 10 per cent over last year.

However, this month was only partially in the postwar period. A preliminary release of partial September figures by the FPC indicates that revenues in that month were down about 1 per cent, and the gain in net income over September, 1944, was 3.6 per cent. No October figures for all utilities are available as yet, but in that month the Commonwealth & Southern system (which had probably enjoyed a very substantial volume of war business in the areas


CLASS A AND CLASS B PRIVATELY OWNED ELECTRIC UTILITIES IN THE UNITED STATES
SOURCE AND DISPOSITION OF ELECTRIC OPERATING REVENUES
September, 1945
SOURCE
DISPOSITION
MILLIONS OF DOLLARS
253.9
RESIDENTIAL SALES
COMMERCIAL SALES
INDUSTRIAL SALES
OTHER SALES TO ULTIMATE CONSUMERS (1)
SALES TO OTHER ELECTRIC UTILITIES
FUEL EXPENSE
SUPPLIES AND WAGES
OTHER OPERATING EXPENSES
DEPRECIATION
TAXES
NET ELECTRIC OPERATING REVENUES
1941
1942
1943
1944
1945
(1) INCLUDES, IN ADDITION TO REVENUES FROM SALES OF ENERGY, OTHER MISCELLANEOUS ELECTRIC OPERATING REVENUES.

served by its northern group) reported a decline in gross revenues of less than 1 per cent and a decline in the balance after charges of about 3 per cent. Blackstone Valley Gas & Electric showed a gain in revenues for October but a decline in net. Carolina Power & Light showed a small gain in gross but a decline in net. Central Maine Power showed a dip in gross with a substantial increase in the balance after charges; and Central Vermont reported a small dip in gross and a more substantial decline in net. Dallas Power & Light reports revenues for October about the same as last year, while net was up moderately. Iowa Electric Light & Power showed a gain in gross, a slight loss in net; Iowa Southern a slight gain in net.

THESE results may, of course, reflect the momentum of wartime prosperity and activity, so far as residential and commercial consumption are concerned. If unemployment mounts in 1946, some families may begin to watch their use of electricity more carefully and reduce monthly bills. Also, belated population shifts due to reconversion may affect the 1946 picture adversely. On the other hand, new electric appliances will begin to come into the market in some volume by spring. New building of homes and apartment houses probably won't get under way in substantial volume until later, because of labor and material shortages, but should aid residential revenues by 1947. Obviously there are so many cross-currents that any accurate forecast is impossible.

The fact that industrial revenues have fallen off less than half the amount of the kilowatt-hour sales (at least as indicated for August) seems to show that much of the wartime business was low-rate, small-profit business.

While, in our opinion, the decline in gross may not be so severe as feared by Mr. Kellogg, expenses may mount heavily as the utilities begin to feel the full brunt of inflationary forces. Fuel costs in the month of August were nearly 10 per cent below last year, but this is entirely misleading. The industry has been blessed this year with an abundance of hydroelectric power; the sectional droughts which prevailed in earlier years seem to be entirely absent. The utilities were able to dispense with expensive stand-by steam plant operations. In September hydro-generated power was nearly 15 per cent larger than in the corresponding month of 1944 while fuel-generated electricity was 14 per cent lower. Because of the coal shortage due to strikes, hydro plants will doubtless be used as much as possible. But if droughts reappear in 1946, increased fuel consumption will again be necessary, at a time when the unit coal costs are increasing, due to higher wages allowed to the miners; and any change in fuel costs has an important bearing on net income, since the fuel bill is about three-quarters the amount of net income.

THE utilities are also having some labor troubles, and many wage readjustments either already have been allowed or may prove unavoidable next year. It will also be necessary to take back former employees released from the armed services (though this may be offset to some extent by reduced working hours). Salaries and wages, which approximate in amount the net income of the utilities, have an important bearing on net earnings, though of course Federal taxes afford protection against increased costs to the extent of 38 per cent. Miscellaneous expenses, including costs of materials for repairs, are about equal in importance to labor costs, and in August showed a gain of nearly 6 per cent over 1944.

A fourth item, also roughly proportionate to net income, is the sum of fixed charges and preferred dividends (excluding amortization). Due to the heavy refunding operations of September-November and the continued program (now being resumed after the close of the Victory Bond Drive), further reductions in this item appear likely in 1946, though the results may be obscured by heavy nonrecurring amortization items (which in August were double the amount of a year previous).

With so many uncertainties ahead, it would be unfair for the state commissions to attempt to develop any advance formula for rate cuts in advance of definite figures showing the trend. The September-October figures, while of interest, may prove misleading because they do not reflect higher costs. Moreover, there will be wide variations among the individual companies. Any rate adjustments next year should be based on actual results for a number of months—not on the initially favorable results which may reflect tax savings, without the corresponding increase in operating costs which will develop more gradually.

Moreover, it is necessary to emphasize again a point often lost sight of by the regulatory commissions—common stockholders have been on a starvation diet for many years. To benefit consumers as well as investors, a large amount of rebuilding of generating facilities is in order, to reduce the cost of kilowatt hours. There has been practically no equity financing for the past twelve years, yet such financing is highly essential to maintaining a sound financial structure of the industry. If stock prices can be maintained around or above present levels, the utilities may be encouraged to issue rights. (Several issues have been made in 1945 but they involved comparatively little new-money financing.)

COMMON stockholders in 1944 received in dividends only about 9 cents out of the revenue dollar, compared with 14 cents in 1937 and probably a larger percentage in earlier years. (Data are not available.) Dividends in 1944 were less than in 1943 and showed a decline of 15 per cent from the prewar year 1940. Restoration of dividend rates to at least the prewar level is essential to restore investors' faith in fair regulatory standards.

Wall Street Analyses

BEAR, STEARNS & Co. has recently issued analyses of North American Company and Pennsylvania Power & Light Company. The North American study arrives at an estimated breakup value for the common stock of $35.70 a share. About one-third of the total portfolio value of $366,000,000 consists of Union Electric of Missouri; this stock, wholly owned by North American, is valued in the study at 17.5 times earnings; most of the other important items are taken at market prices. After deducting bank debt and remaining preferred stock, totaling $60,600,000, the equity for the common is estimated at $306,000,000.

The firm gives a detailed analysis of Union Electric, pointing out that earnings are likely to increase substantially as the result of tax savings, etc., that capital structure is conservative, property accounts reasonably stated, and depreciation reserve above average. However, it is pointed out that a rate cut appears possible despite the fact that Union's average rate is well below the national average.

With reference to the Illinois Power suit, Bear, Stearns estimates that, as a result of various intersystem adjustments and concessions, North American Company might realize a net figure of $17,500,000 on its investment in North American Light & Power. Even if the entire investment were wiped out, this would reduce the estimated share value by only about $2. They expect that the position of the company with respect to integration requirements will be clarified following a Supreme Court decision on the Utility Act; it will be a comparatively simple matter to dispose of remaining debt and preferred stock.

THERE has been a great deal of Street interest recently in Pennsylvania Power & Light, the new "when-issued" stock which is listed on the Stock Exchange. National Power & Light has issued rights to its stockholders to subscribe to the stock at 10, although the current quotation is around 22. Bear, Stearns gives a general description of the company, analyzing the improved capital structure and the lower generating costs following completion of the new power plant.

ELECTRIC—GAS OPERATING COMPANY STOCKS

	Where Traded	Price About	Div. Rate	Yield About	Share Earnings 12 Mos.	Share Earnings Amt.	Price-Earn. Ratio
Arizona Edison	O	19	$ .80	4.2%	Sept.	$1.71	11.1
Arkansas-Missouri Power	O	16	.60	3.8	Sept.	1.24	12.9
Beverly Gas & Elec. Co.	O	50	2.65	5.3	Dec.	2.41	20.8
Black Hills Power & Light	O	26	1.20	4.6	July	1.85	14.0
Boston Edison	B	45	2.00	4.4	Sept.	2.27	19.7
Brockton Edison Co.	O	36	2.00	5.6	Dec.	2.10	17.1
Central Ariz. L. & P.	O	13	.60(a)	4.6	Sept.	.85	15.3
Central Hudson G. & E.	S	13	.48	3.7	Sept.	.56	23.2
Central Ill. E. & G.	O	27	1.30	4.8	Sept.	1.86	14.5
Central Vermont P. S.	O	23	1.08	4.7	Oct.	1.69	13.6
Cleveland Elec. Illum.	C	49	2.00	4.1	Sept.	1.95	25.0
Commonwealth Edison	S	34	1.40	4.1	Sept.	1.80	18.8
Community Public Service	O	37	2.00	5.4	Sept.	2.71	13.6
Concord Elec. Co.	O	45	2.40	5.4	Dec.	2.46	18.3
Connecticut Light & Power	O	63	2.70	4.3	Oct.	2.75	23.0
Connecticut Power	O	52	2.25	4.4	Dec.	2.33	22.3
Consolidated Edison N. Y.	S	33	1.60	4.8	Sept.	1.78	18.5
Consolidated Gas (Balt.)	C	81	3.60	4.5	Sept.	4.73	17.1
Delaware Power & Light	O	24	1.00	4.2	Sept.	1.20	20.0
Detroit Edison	S	25	1.20	4.8	Oct.	1.00	25.0
Duke Power	C	98	4.00	4.1	Dec.	4.75	20.7
Empire Dist. Elec.	O	22	1.12	5.1	Dec.	1.66	13.2
Fall River Elec. Lt.	O	56	2.60	4.7	Sept.	2.98	18.8
Fitchburg G. & E.	O	50	2.50	5.0	Dec.	2.44	20.5
Florida Power Corp.	O	18	.80	4.5	July	1.02	17.6
Hartford Electric Light	C	67	2.75	4.1	Dec.	2.45	27.4
Houston Lighting	S	88	3.60	4.1	Sept.	4.89	18.0
Idaho Power	S	40	1.60	4.0	Sept.	2.58	15.5
Indianapolis P. & L.	S	33	1.20	3.6	Sept.	1.90	17.4
Iowa Public Service	O	15	.40	2.7	Sept.	.74	20.3
Lawrence Gas & Elec.	O	40	2.05	5.1	Sept.	2.28	17.5
Lowell Elec. Lt. Co.	O	50	2.35	4.7	Sept.	2.33	21.5
Lynn Gas & Elec.	O	98	5.00	5.1	Dec.	4.92	20.0
Michigan Public Service	O	21	1.00	4.8	Sept.	2.06	10.2
Missouri Public Service	C	33	.60	1.8	Dec.	2.90*	11.4
Missouri Utilities	O	18	1.00	5.5	Sept.	1.23	13.0
Montana-Dakota Utilities	C	12	.60	5.0	Sept.	.95	12.6
Mountain States Power	C	29	1.50	5.2	Aug.	2.09	13.9
New Bedford Gas & Ed. Lt.	O	74	4.00	5.4	Sept.	4.81	15.3
New Orleans Pub. Ser.	O	34	1.40	4.1	Oct.	2.19	15.6
Newport Elec.	O	29	1.60	5.5	Oct.	2.06	14.1
Pacific G. & E.	S	44	2.00	4.6	Sept.	2.17	20.3
Penn. Water & Power	C	80	4.00	5.0	Sept.	4.97	16.0
Phila. Electric	S	28	1.20	4.3	Sept.	1.59	17.6
Pub. Ser. of Colorado	O	38	1.65	4.3	Sept.	2.29	16.6
Pub. Ser. of Indiana	O	36	1.00	2.8	June	2.00	18.0
Puget Sound P. & L.	C	16	1.20	7.5	Sept.	1.70	9.4
Rockland Light & Power	O	10	.50	5.0	Dec.	.56	17.9
San Diego Gas & Electric	O	17	.80	4.7	Sept.	.95	17.9
Sierra Pacific P.	O	27	1.40	5.2	Sept.	1.57	17.2
Sioux City Gas & Elec.	O	52	1.60	3.1	Sept.	2.75	18.8
Southern Calif. Edison	S	36	1.50	4.2	Sept.	1.72	20.8
Southwestern Elec. Ser.	O	13	...	..	Aug.	1.06	12.3
Tampa Electric	C	35	1.60	4.6	Sept.	2.07	16.9
United Illum.	O	50	2.00	4.0	Dec.	2.14	23.4
West Penn Power	O	27	1.20	4.5	Sept.	1.25	21.7
Western Mass. Cos.	O	37	1.60	4.3	Sept.	2.86	13.0
Wisconsin Elec. Power	O	17	.68	4.0	Sept.	.98	17.3
Averages				4.5%			17.2

S—New York Stock Exchange. C—New York Curb Exchange. B—Boston Exchange. O—Over the counter. *Estimated. **Not adjusted for separation of properties transferred to Southwestern Electric Service. (a) Probable rate.

What Others Think

House Committee Hears Utility Men On Holding Company Act

HEARINGS were held recently by a subcommittee of the House Interstate and Foreign Commerce Committee to consider the desirability of possible amendments to the Holding Company Act of 1935. Under the chairmanship of Representative Lyle H. Boren (Democrat, Oklahoma), several witnesses, chiefly representatives of operating utility companies, appeared before the committee. Further hearings are to be held after January 1st.

Concrete and specific recommendations as to the need of changes in certain provisions of the act were presented by these witnesses. Also, in discussions which occurred during the hearings, various suggestions were submitted, citing the problems confronting private utilities due to inequality of taxation policies, whereby public power bodies are free of the Federal taxes which private utilities must pay. There were noted, as well, the advantages held by these tax-free groups in the acquisition of operating utility properties which are being sold by holding company owners, because of integration orders of SEC under the so-called "death sentence" provisions of the Holding Company Act of 1935.

In testifying regarding "tax equality" with particular reference to what happens when tax-paying utilities are taken over by public power bodies, Kinsey M. Robinson, president of the Washington Water Power Company, stated:

> The electric utility industry consists of two general groups. The first, and much the larger, is composed of the privately owned utilities. This part of the industry was founded and has enjoyed a phenomenal growth without the aid of subsidies of any sort. It has always paid a heavy burden of taxes, has financed itself, has pioneered inventions, and has otherwise fully paid its own way.
>
> In spite of this burden, the tax-paying electric utilities supplied every war and civilian requirement for power without favor or subsidy from the Federal government. . . .

The second is the public power group, which includes the utilities that have been financed by public funds or by use of governmental credit (Federal, state, or municipal) such as:

Federal enterprises
State authorities and other power districts
Rural electric coöperatives financed by REA
Municipalities

IN setting forth the special privileges enjoyed by the public power groups which are not available to private enterprise, Mr. Robinson submitted this list, noting that "subject to state and Federal laws governing each different classification, the following special privileges are exclusively available":

1. *Subsidies and rebates, such as*:
   - Freedom from all Federal taxes
   - Freedom from all or part of state and local taxes
   - Low interest rates based on government credit
   - The right to issue tax-free securities in whatever amounts desired
   - Free grants of money
   - Omission or ignoring of items of construction cost such as interest during construction
   - The right to allocate away part of the cost to other "purposes"
   - Freedom from labor trouble based on the claim that workers have no right to strike against government [The witness evidently here refers to "freedom" from the Fair Labor Standards Act (Wage and Hour), the Wagner Labor Act, and the War Labor Board Act.]
   - Freight and passenger fare rebates
   - Free use of the mails
   - Freedom from the authority of most Federal bureaus
   - Freedom from the need for compiling

and filing information with governmental bodies
Free service from other branches of government

2. *Freedom from the workings of economic and business laws, such as:*
All risks are shifted to the taxpayers or ratepayers who absorb all losses
No obligation exists to earn a return on the investment, or even to earn interest on the amount of money borrowed
The management is not directly responsible to the persons who put up the capital for the enterprise, and hence are under no obligation to them to make the utility pay its own way in full. The government cannot lose the property through default of any obligation
The public power enterprises, in general, can fix their own rates and are free from the control of regulatory bodies
The SEC has no jurisdiction over public power and its financing
Accounts can be kept in any fashion desired
Bonds need not be sold in the competitive money market; instead, often such bonds are taken by a Federal agency
The entire cost of the enterprise can be financed with borrowed money and without the property security required of private enterprise

3. *The advantages of being part of government, such as:*
Freedom from restrictions and regulation
Superior powers of eminent domain (in most cases public power can expropriate private utilities)
Preferential laws [italics supplied]
The ability to eliminate competition and make of itself a true monopoly, upheld by governmental authority
No need for obtaining franchises, licenses, and other permits
No need for obtaining Federal licenses for water-power developments, with their attendant obligations and restrictions

Stating that freedom from taxation, especially Federal taxes, is the most valuable, and the most unfair, of all the long list of exclusive favors enjoyed by public power, Mr. Robinson showed that taxes constitute by far the largest single item of expense of the tax-paying electric utilities. In 1943, the industry's total taxes were about twice its total payroll; those taxes exceeded the total interest and dividend payments of the electric companies and Federal taxes alone exceeded their total dividend payments.

REFERENCE was then made by this witness to Federal income taxes paid by the owners of bonds and stocks of the tax-paying utilities, whose securities are not tax exempt as are those of public power bodies. In the midst of discussion of this matter of the double taxation burden upon the private utilities, Chairman Boren made these observations relative to the general question of tax exemptions:

. . . I do feel that the field of our discussion . . . is not only legitimate but important for the Congress to direct its thought to. If we are going to have universal public ownership of electric utilities in this country—and it may be desirable—it ought to be determined by government policy as to whether it is desirable. I do not think that we ought to do it by the backdoor piecemeal procedure because of what benefit, if the alleged benefits are there, that accrue to certain local areas throughout the United States. We have to pay taxes to build those benefits to those particular areas.

Then I also think we ought to divide it rather than to permit these favoritisms in the form of tax exemptions and other things which are permitted by indirection. . . .

. . . Out in Oklahoma, in my particular area at least, so far, we have never received any of the so-called benefits of public power, excepting from REA, but I assume at least we have been taxed to help pay for the TVA, and the Bonneville, and all of the rest of them that have been built; and I believe you are absolutely correct in saying that we should not have this favoritism. . . .

But you people [in TVA territory] will have had the use of the Oklahoma taxpayers' money in the TVA for fifty years and during the same time your industry has been exempted from taxing; that is, your electric bills pay no taxes, while my electric bill does pay taxes for the same fifty years. So, I still assert that what I said is sound and there is a burden on us, if this thing is true, whether it be in the form of direct congressional appropriations, or loans of Federal funds at an interest rate that is cheaper than the average, or whether it be in the form of tax exemptions.

So I feel that these are very vital figures to those of us, especially those of us who do not enjoy any of the benefits. Of course, those benefits still remain somewhat uncertain, and I think they differ in different areas.

Representative Hinshaw (Republican, California) added this comment:

I think the question is whether or not you want the entire public utility industry of the United States go on public power projects entirely tax exempt from the income and

Courtesy, Collier's

"WHAT A PERFECT YULE LOG, HERMAN!"

property in so far as most of the taxes are concerned, thereby having uniformity in that way over the United States or whether you want to operate your public power projects on an equivalent tax basis so that you receive the revenue from the utility industry. You either want one thing or another and it is about time that the question was decided. It is not any more fair for your district to have to pay taxes than it is for Mr. Reece's [Tennessee] district not to have to pay taxes.

To point up graphically the contrasting picture of certain of the tax-free public power bodies, when compared with private utilities of like dollar income and kilowatt-hour sales, Mr. Robinson presented several tables. These comparisons included the Pacific Northwest Federal power projects, TVA, and Consumers Power District of Nebraska. Space does not permit giving the detail, but each table demonstrates vividly the benefits enjoyed by the public power bodies in their freedom from tax payments such as the private utilities are under obligation to pay.

In concluding his statement on the question of tax equality, Mr. Robinson said:

It is evident that as private tax-paying property and business are progressively taken over or destroyed by government and government-fostered groups, and so removed from the tax rolls, the total tax burden is not reduced in any way. On the contrary, it must be met by increased charges on the remaining private business and private income. When, as is usually the case, the new government activities are doing business at a loss, the total tax burden is actually increased and the added charges on the remaining taxpayers are correspondingly increased.

While the lack of fair play in the granting of special privilege such as tax exemption is bad enough, it is not the most serious feature of this growing practice. Grants by the sovereign power of economic favors of such great value bring about the destruction of free enterprise and the substitution of government monopoly in its place. These adverse results are of great material consequence to the public and the social structure, as well as destructive of America's economic strength.

As this session of the hearing ended, Chairman Boren, referring especially to the sale of operating utilities under SEC orders, and the lack of regulatory control of possible purchasers, said:

. . . the point at issue here and what we are

looking at in connection with the Holding Company Act is, on the one hand, we have a government agency saying that you must sell this property, and on the other hand, we have a government agency controlling one possible purchaser, but having no control over another possible purchaser and perhaps leaving an advantage in the hands of another. That is the basis on which I am approaching it.

J. W. McAfee, president of Union Electric Company of Missouri, of its subsidiaries, and of St. Louis County Gas Company, also appeared before this committee. In opening his statement he listed a number of demands confronting a business-managed utility company, which he said are difficult to reconcile:

1. All operating costs, including construction, materials, and fuels, have been increasing rapidly.
2. Taxes—state, local, and Federal—will necessarily remain at high levels.
3. Customers expect and the industry desires to continue the policy of progressively lower rates.
4. The operating companies must be kept financially sound in order to attract the large capital sums required to keep their systems modern and adequate for good quality of service.
5. The industry is subject to competition from and comparison with government-owned operations which pay no Federal and relatively low, if any, state and local taxes; fail to bear the interest cost of money borrowed by the government and advanced to them; and receive other subsidy advantages. Although I readily acknowledge the need for thorough and effective regulation of the utility business, I do submit that needless duplication and unnecessary complexity in the regulatory field add a cost to utility service which should be eliminated.

Mr. McAfee then stated that he would like to see the Congress reëxamine the Public Utility Holding Company Act of 1935 and the Federal Power Act as they are now applied, on points falling into four main questions:

1. Is not the language used in a number of important sections so general in character as to give the designated commission indefinite and unlimited power?
2. Are not some provisions being interpreted and applied contrary to the intent of Congress?
3. Is it not unsound and extravagant for a number of commissions to be given jurisdiction over the same questions arising out of the same transactions?
4. Are not Federal tribunals in some instances given jurisdiction over questions of such purely local concern as would be more satisfactorily and efficiently disposed of by and in the state involved?

As an illustration bearing on these questions the witness referred "to the SEC opinion and order dated April 7, 1945, in a case which considered the jointly operated systems of Union Electric Company of Missouri and the St. Louis County Gas Company, both being subsidiaries of North American Company. North American had been ordered by the commission to divest itself of all of its holdings except those in the Union Electric system, with certain reservations, and this case was to determine whether it could retain County Gas as an additional system, as provided in § 11(b)(1).

Mr. McAfee cited the provisions of this section. The commission, he stated, handed down an adverse decision, based on its finding with respect to Clause A—the "substantial economies" clause—of that section.

He then outlined in some detail the operating relations of Union Electric and County Gas, described the economies effected by the jointly conducted operations—the economies to the gas company being substantial—and cited the direct advantages to the customers of both companies arising from the joint operations.

At considerable length Mr. McAfee quoted from, and commented upon, the commission's opinion, and its summary of its staff's findings. These latter included comparisons of certain phases of the electric and gas business. These comparisons, he stated, "completely ignored unrefuted evidence." This, he said, "completely destroys the contention made by the commission 'that to expect vital competition between two types of service when controlled by the same interest is, in our opinion, highly unrealistic.'"

Mr. McAfee then said to the committee:

Thus we have a situation where the average consumption of each service is high, quality of neither service is questioned, rates

are comparatively low, and substantial economies are obtained by joint operation.

If, as the commission apparently believes, the advantages to be gained by independent operation of gas and electric utility businesses actually outweigh any showing of money savings effected by jointly conducted operations, Congress could have provided in the act that a holding company could not control both gas and electric businesses. This Congress did not do. In § 11 (b) (1) of the act, Congress obviously recognized that it is appropriate, in certain cases, for gas and electric businesses to be operated jointly. Also, in § 8, which refers to "ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory," Congress prohibited such ownership or operation only where it is contrary to state law or without the consent, where required, of the state commission having jurisdiction.

The wording of the act, it was suggested by Mr. McAfee, may not be sufficient to limit the commission to what appears to be the intent of Congress. He added:

> You will see that the commission is directed to permit joint operation upon the affirmative finding of a negative fact; *i.e.*, that the "systems *cannot* be operated as an independent system without loss of substantial economies." One is able only to produce proof of what has happened—no one is able to show irrefutably that a thing cannot be done. If the commission's view expressed as follows: "The benefits of terminating widespread control, subtle and apparent, must be considered as offsets to the claims of lost economies, only the balance, although it may be inexpressible in money terms, can form the basis of decision" is a fair interpretation of the act, then there are no standards, proof of facts is useless, and the commission acts, not as a tribunal, but as a legislative body. Furthermore, is there any real question of Federal policy here? Giving full credit to the intangible values upon which the commission relies, is it not a question for the customer and the state in which he resides as to whether such values are more desirable than the proven economies? Suppose different localities reached contrary conclusions, would the national welfare be affected?

He then recommended "that the act be amended so as to provide that a combination electric-gas operation in the same territory constitutes a single integrated public utility system."

Turning then to § 3(a)(2) of the act, relative to "exemption as a holding company," Mr. McAfee outlined the position of Union Electric Company of Missouri, a Missouri corporation, with respect to its wholly owned subsidiary, Union Electric Power Company, an Illinois corporation. He cited the single management of the two corporations, the entire electric power requirements being met from a single power pool, the object being to run a unified, operating utility system. He noted:

> . . . Union of Missouri is technically a public utility company on the Missouri side of the Mississippi river, and is technically a holding company on the Illinois side of the river due solely to the Illinois statutory requirement.
>
> Union of Missouri is subject to the jurisdiction of the Missouri Public Service Commission which has broad general powers of supervision and regulation with respect to services and facilities, rates and charges, classification of accounts, valuations of property, capital structure and issue of securities, and various other matters. The Illinois subsidiary is similarly subject to the jurisdiction of the Illinois Commerce Commission.

"In considering this subject, as it appears to us," Mr. McAfee continued:

> I call attention to the fact that we do not seek freedom from regulation but only to escape unnecessary and duplicating supervision. As Commissioner Mathews points out in his dissenting opinion: "It is not necessary, in order to accomplish the purposes of the act, to extend the interpretation of § 3 (a) (2) beyond the meaning which would ordinarily be associated with its language. To hold that Union Electric Company of Missouri is predominantly a public utility company within the meaning of § 3 (a) (2) does not mean that the company will be freed from regulation if it would be detrimental to the public interest or the interest of investors or consumers to free it from such regulation."
>
> We believe the act should be amended to make it clear that where the assets of an applicant and all of its subsidiary companies constitute an integrated public utility system and where the revenues of applicant from operations as a public utility constitute more than 50 per cent of the aggregate of the operating revenues of the applicant and its subsidiary companies, then applicant is not a holding company within the meaning of the act.
>
> The act should further make it clear that when the state commission has adequate regulatory jurisdiction the Federal commission should not have duplicating jurisdiction.

IN concluding his testimony, Mr. McAfee commented upon certain results produced which are beyond the purposes announced by Congress in its enactments:

> There is nothing in the Holding Company Act of 1935 or in the Federal Power Act which indicates that the Congress had intended thereby to bring about the socialization of the utility industry. Nevertheless, the application of parts of these acts is directly producing that result.
>
> The "death sentence" clause is designed to limit the scope and to provide additional regulation for the holding companies. Compliance with it necessarily means that a number of operating utility companies must be sold.
>
> Now let us see how the situation thereby created is affected by the Federal Power Act. The Federal Power Commission has, pursuant to the authority granted to it, established a system of uniform accounts. Property and plant are to be entered in such accounts at original cost. The definition of "original cost," as specified by the commission, is the cost to the one first devoting the property to public service. Thus, it is not original cost to an owner who has purchased at arm's length in good faith, but may be cost to some owner who preceded him—a sort of "aboriginal cost." The commission has been requiring that a purchaser must write off out of income any difference between his purchase price and original cost as so defined.

To illustrate what happens from these concepts, this picture was presented:

> . . . A holding company is obliged to dispose of an operating property. The property was constructed at a time when costs were very low.
>
> To duplicate its facilities presently would cost a great deal more. In some instances a holding company would have itself paid substantially more for the property than the original cost. If private capital desires to obtain the assets and is willing to pay for them approximately what it would cost to build similar assets, its income will be so reduced by the necessary difference between purchase price and original cost that it is unprofitable to buy. There remains only one prospective customer—some subdivision of government. Governmental agencies are not subject to these accounting and regulatory disadvantages.
>
> Furthermore, if such a governmental agency makes the purchase, it can afford to pay a very generous price and yet appear to make a good showing on the property. This is because such agency will not include in its costs much of the tax burden which private investors would bear and because, using the credit of the government and other subsidies available to it, it would escape costs which are part of utility service.
>
> The unavoidable result of these situations is that private capital is prevented from competing with the government in obtaining such businesses.

"Our form of government," Mr. McAfee told the committee, "is so responsive to the will of the people that no one challenges the right of a majority of the citizens to have their government engage in business. The decision should be made by the majority."

ANOTHER operating utility executive who appeared before the committee was Walter H. Sammis, president of Ohio Edison Company and of Pennsylvania Power Company. He stated that the latter company (all of whose stock is owned by Ohio Edison) operates across the state line in Pennsylvania and the two properties are operated jointly by the same management, the necessity for two separate corporations being due to state laws. Mr. Sammis said:

> I understand that the chief interest of your committee is what happens when the stock of an operating company is sold by a holding company to a tax-exempt body. I do not think that that is an immediate possibility in our case. I assume, however, you are also interested in what happens to the operating companies whose stock is distributed to the public, either by sale or by distribution to the stockholders of the holding company. The immediate question that I desire to call to your attention is the question of what regulation such operating companies should be subject to when the operations are conducted over state lines and are conducted technically by two corporations, the stock of one being owned by the other.
>
> Technically Ohio Edison Company is a holding company because it owns the stock of Pennsylvania Power Company, which conducts the operations in Pennsylvania. The gross revenues of the Pennsylvania Power Company are approximately 23 per cent of those of the Ohio Edison Company alone and approximately 19 per cent of the combined revenues of the two companies. The point is that the operations of the two companies are conducted as a unified operation. The whole system is an operating system and I submit that Ohio Edison Company is not the kind of a holding company that the act meant to regulate.

Asserting that his company (Ohio

"GAWD, SARGE, WHAT A BEAUTIFUL TARGET!"

Edison) is not a holding company in the ordinary sense of the word, Mr. Sammis referred to the definition of the words, "holding company," in § 2(a)(7) of the act.

He noted that "after the all-inclusive definitions in paragraphs (A) and (B), there is a sentence stating that the commission, upon application, shall by order declare that a company is not a holding company if it finds certain facts." In all fairness, he added, "there should be added to that another sentence somewhat as follows":

> The commission, upon application, shall by order declare that a company is not a holding company if the commission finds that . . . the utility assets of the applicant and all of its subsidiary companies constitute an integrated public utility system or a part of an integrated public utility system, and the operating revenues of the applicant from its operations as a public utility company constitute at least 50 per cent of the aggregate of the operating revenues of the applicant and its subsidiary companies.

Mr. Sammis then stated that § 3(a) of the act, relative to the power given the commission to exempt holding companies from provisions of the act in certain cases, provides, among other things, that the commission

> shall exempt any holding company, and every subsidiary thereof as such, from any provision or provisions of this title, unless and except in so far as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if . . . such holding company is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto . . .

In concluding his testimony, Mr. Sam-

mis again called to the committee's attention that "the exemption of Ohio Edison Company and similar companies from the jurisdiction of SEC when they cease to be subsidiaries of a holding company will in no sense relieve these companies from full regulation." They will continue to be subject to full regulation by their respective state public utility commissions, and as to accounting and rates for interstate power by the Federal Power Commission. Security issues also will be subject to the Securities Act of 1933 and the rules of SEC thereunder.

THE matters of the acquisition by public power bodies of operating electric utilities divested from holding company ownership by SEC order, under the integration provisions of the act, and the consequent increase in taxation inequality, were especially dwelt upon in the testimony of Howard Berolzheimer, economist for the National Tax Equality Association of Chicago. This organization, he stated, is made up largely of small businessmen, and its major interest is to promote equal taxes among competitors.

As this committee recognizes, Mr. Berolzheimer said,

> there is involved in this question not one problem but two or three concurrent and interdependent problems which flow from the divestment provisions of the Holding Company Act. The prime cause of the present controversy is the pressure under § 11 (b) (1) which forces public utility holding companies to sell their property. A fairly large amount of this property has already been sold to municipalities, power districts, drainage and irrigation districts, REA utilities, and government corporations.
>
> . . . the tenth annual report of the SEC, page A-15, which summarizes the divestments actually made since 1935, indicates around $250,000,000 of properties have been sold to these organizations. The importance of these divestments in this investigation is that the income from these properties now becomes tax free at the Federal level—what were once income tax-paying enterprises now become income tax immune. Nor does this affect only the Federal Treasury—for in many cases tax-immune enterprises receive tax preferences at both the local and state level. For example, the state of Oklahoma has relieved the REA from state and local taxes for twenty-five years; other states have also provided tax privileges. With the properties absorbed by TVA, Federal taxes are lost forever unless the government sees fit to levy upon its income as it does upon the income of any other privately owned utilities. The same condition exists in regard to the $500,000,000 already invested in REA utilities by the tax-paying public, and it will be equally true of a like amount invested if the present Poage Bill becomes law. In the case of PUD's and municipal ownership, there is no Federal income tax to pay.

Thus, Mr. Berolzheimer pointed out:

> . . . If taxes can be added back into income and the income thus expanded used as a base for purposes of setting up capital values—and these values in turn translated into bonds sold to the public—then you have an inflation of the most grotesque sort, based solely upon the fact that the Federal, state, and local tax gatherers are no longer a financial consideration.

Commenting that the Nebraska Power and Puget Sound Power & Light situations are by no means the only ones in which this "ballooning of values" has been made, the witness described other cases "to underscore the above procedure":

> The Missouri Supreme Court decided Case No. 10,383, on May 26, 1944. The Associated Gas & Electric Company was ordered, on August 12, 1942, to dispose of the Missouri Southern Public Service Company. Evidence submitted indicated the value at the time of sale to be $118,000. The REA made an allotment of $181,000 to a coöperative at Cassville, Missouri, which paid $170,000 for the property. Taxes paid by the seller were a total of $4,619 for the year prior to sale.
>
> If this tax is capitalized at 10 per cent (which is not an unusual figure in public utility finance), the result is $46,000 odd, which, added to the indicated value of $118,000, totals $164,000. That $170,000 was paid for the property indicates that the taxes paid were capitalized at less than 10 per cent, which is certainly a questionable procedure. Commissioner Wilson, dissenting, calls this "inflation in one of its most vicious forms." It is to be noted that this action cannot be laid at the doorstep of a private promoter, but the guilt quite obviously is due to the REA in its zeal to grow and because it has vast sums of public moneys at its disposal.
>
> In two other cases in Missouri, the tax in one was $118,200, in another $56,440 for 1944. These are relatively small amounts, it is true, but when one realizes that hundreds of small tax-paying properties have been transferred to REA coöperatives, which pay little or no local taxes and no Federal taxes whatever, one cannot but be alarmed at the prospect of transferring $3,800,000,000 of as-

sets against which the SEC had issued divestment orders up to June, 1944.

It is not to be assumed that this huge total will be transferred to tax-immune organizations, but with close to one-quarter of a billion in assets already so transferred off the tax rolls, I do not think I am overstating when I say there is room here for concern by the Federal Treasury, the local tax gatherer, and, more particularly, the individual businessman and common citizen whose duty it will be to make up this loss to the Treasury, for as the tax base recedes the rate must increase. Under the pressure of present high tax rates, this becomes an inequity of vast magnitude to those who pay taxes in support of the Federal government.

AN interesting collateral problem follows the major one, Mr. Berolzheimer told the committee. The question naturally arises—"where do tax-free organizations get their funds to make purchases at these exorbitant prices?" The REA coöperatives, he noted, borrow from the REA, and municipalities borrow through RFC. However, he said:

> The most important and significant method of securing funds . . . is through the issuance of revenue bonds in which the purchaser of the property usually pledges the income from the property purchased as a guaranty that the interest will be paid and principal amortized. There are at present about 700 municipalities and other tax-free organizations issuing securities of this nature, with something over $1,600,000,000 of obligations outstanding, not including issues of educational institutions. This is the procedure to be followed in both the Omaha and the Puget Sound situations.

He then pointed out that "through this method of financing there is a triple loss of tax revenue," adding:

> . . . The tax paid by predecessor corporations is now lost, and the income tax paid on interest by the holder of the corporate securities is also lost, since these securities are now displaced by revenue bonds. Then, too, the local taxing bodies, as well as the state, rarely are able to levy against the physical property. Because of this tax savings, income is now increased—and, hence, in capitalizing this expanded income, a tax-immune public utility district, REA coöperative, or municipality can and does pay more for property than would be possible by a private taxpaying buyer and can, consequently, issue bonds against this inflated value.

In closing, Mr. Berolzheimer made this observation:

> The serious by-product of the divestment provisions in the Holding Company Act—one not only presently critical but which will obviously become more so if the present trend continues—is that the businessman and common citizen of this country will have to carry ever heavier tax burdens as more and more income-producing and tax-paying property finds haven as tax-immune enterprise. It is all very well for us at this committee hearing to discuss the "loss to the Treasury," but, translated in the language of the small businessman whom I represent, this can only mean that he will have to pay heavier taxes to compensate for these losses.

ANOTHER instance of a combined electric and gas operation, owned and operated by one company in one state, wherein the SEC has ordered the disposal of the gas business, was presented to the committee by R. K. Lane, president of the Public Service Company of Oklahoma.

Mr. Lane began his statement by saying that it is his company's "contention that the Public Utility Act of 1935 should be clarified and revised to better protect investors, consumers, and the public generally." He then gave this outline of his company's situation:

> The retention of the gas properties of Public Service Company of Oklahoma, which may present a different situation than that which generally exists, is of prime importance to the company.
>
> Ours is a localized area both as to gas and electric. There is no scattering of operating attention. On the other hand, the two properties are being jointly operated with savings to both, each having a functional relationship with the other.
>
> There is no competition between our gas and electric service but rather they are complementary to each other. The function of the gas is largely space heating. Fuel for industry in the area is very minor. Electric service does not compete with space heating. Gas service does not compete with electric lighting.
>
> The area is largely agricultural and thinly settled and both gas and electric operations necessitate proportionately large investments. In order to promote the territory and offer reasonable rates, it is imperative to effect every possible economy such as that obtained through the coördination of the gas and electric operations.
>
> The gas and electric operations are a joint business and not separate and distinct either as to management, maintenance, or operation.

Various exhibits were filed with the

committee by Mr. Lane. These entered into detail regarding the outline statements noted above, commented upon the advantages in joint operation—to both electric and gas departments—of ample supply at low rates of natural gas for electric generating plant fuel, and indicated the higher gas rates which customers would have to pay if the gas department were on its own, with the various present advantages lost to it.

Some of the exhibits listed fuel costs and savings due to joint ownership and operation of the two services, also the value in economies of operations because of the peak loads in the two departments generally coming at different seasons of the year.

SPECIFIC recommendations were made by Wendell J. Wright, general counsel of Public Service Corporation of New Jersey and of its principal subsidiary, Public Service Electric & Gas Company. These were with respect especially to the retention of both electric and gas properties, particularly by a single corporation, and also the retention of "nonutility" business under the so-called "other business" provision of § 11. Mr. Wright said:

> If we are mistaken in our belief that the commission has misconceived the intent of the act in these respects, we respectfully urge that in the light of experience the act should be amended so as to provide that a combination gas and electric company may in itself be an "integrated public utility system," and that when a combination company lawfully owns or operates both electric and gas properties which are subject to regulation by a state commission, these properties should not be divested without the express approval of such state commission.
>
> Also, we suggest an amendment to the so-called "other business" provisions of § 11, which will permit the retention of an interest in other businesses unless it is affirmatively found that such retention is inconsistent with the public interest or the protection of investors or consumers.

Then submitting to the committee the wording for the amendments he suggested, Mr. Wright cited decisions of SEC in various utility cases having direct bearing on the sections of the act which he was discussing.

THE extracts herein presented from the statements of several witnesses who appeared before the committee indicate the practical and constructive approach which was made to the subject by these representatives of business-managed utilities. It was evident at these hearings that not only Chairman Boren, but other committee members, were impressed with the factual arguments presented by these men—most of them executives of operating utilities—who were talking out of personal experience. It was noticeable that "theories" were not put forward in their testimony, but rather the actual problems confronting operating utilities in conducting their day-to-day business under the Public Utility Act as enacted and now administered.

Testimony was also given by Ganson Purcell, chairman of the Securities and Exchange Commission; Milton H. Cohen, director of the commission's public utilities division; Paul Grady, partner in the firm of Price, Waterhouse & Co., certified public accountants; and Elisha Friedman, consulting economist of New York. Their statements will be reviewed in a forthcoming issue of PUBLIC UTILITIES FORTNIGHTLY.

Chairman Boren recently announced that when hearings of his subcommittee are resumed after the first of the year, it is expected that representatives of holding companies will testify. He also stated that Leland Olds, acting chairman of the Federal Power Commission, Paul J. Raver, Bonneville Power Administrator, and Guy C. Myers, financial agent, have been asked to appear before the committee.

—R. S. C.

¶"INVESTMENT *is the keystone to the prosperity arch, yet, for some reason, it has been discussed the least.*"

—CLINTON DAVIDSON,
President, Management Planning, Inc.

The March of Events

NARUC Meeting

WELCOMED by Governor Caldwell of Florida, the fifty-seventh annual meeting of the National Association of Railroad and Utilities Commissioners began its session at the MacFadden-Deauville hotel, Miami Beach, on December 4th and carried through a full 4-day program. Featured speakers were the president, John D. Biggs, Director of the ODT J. Monroe Johnson, FCC Commissioner Paul A. Walker, Chairman Richard B. McEntire of the Kansas Corporation Commission, the advisory counsel of the association, John E. Benton, and Representative Hatton W. Sumners (Democrat, Texas), chairman of the House Judiciary Committee.

Among reports of committees and topics discussed, proposed new legislation for the amendment of the Federal Power Act and a discussion of the utility rate picture as a result of the end of the war and excess profits taxes drew the most attention from the commissioners. The latter discussion was led by Clyde O. Fisher, member of the Connecticut Public Utilities Commission.

John D. Biggs was elected president for a full term. Duane Swanson of the Nebraska State Railway Commission and Walter R. McDonald of the Georgia Public Service Commission were elected first and second vice presidents, respectively. All other full-time association officers were reëlected.

The next meeting was scheduled to be held in Los Angeles, California. Further details of the addresses and reports will be carried in the next issue of the FORTNIGHTLY.

FPC Silver Jubilee

IN honor of the twenty-fifth year of regulation under the Federal Power Commission (dating from the Federal Water Power Act of 1920), George Washington University Law School has published a special enlarged edition of its law review. It consists of seventeen articles on various aspects of the Water Power Act, the Federal Power Act of 1935, and the Natural Gas Act of 1938 by leading authors from government, industry, and the professions. Authors include the two chairmen of the Senate and House Interstate Commerce committees, Senator Burton K. Wheeler (Democrat, Montana), and Representative Clarence F. Lea (Democrat, California). Also the chairman of the Federal Trade Commission, Edwin L. Davis; chairman of the New York Power Authority, James C. Bonbright; the advisory counsel for the state utility commissioners, John E. Benton; the former FPC solicitor, Dozier A. DeVane; managing editor of PUBLIC UTILITIES FORTNIGHTLY, Francis X. Welch; and other prominent specialists and practitioners, including Randall J. LeBoeuf, Jr., Carl I. Wheat, Gifford Pinchot, Willard W. Gatchell, J. S. L. Yost, Samuel H. Riggs, Eric L. Kohler, Marshall Newcomb, Charles S. Rhyne, Marjorie I. Clark, and Ben W. Lewis.

Although the printing is limited, copies (bound or unbound) may be purchased from the university.

FPC Bar Formed

ORGANIZATION of the Federal Power Bar Association, a group of attorneys who propose to make recommendations on rules, practice, and procedure for the Federal Power Commission, was completed in Washington on December 5th. The new group plans to function along lines developed by the already established bar associations of the Federal Communications and Interstate Commerce commissions. Membership is open to representatives of all interests appearing before the Federal Power Commission.

Emergency Orders Extended

THE Federal Power Commission last month announced that emergency orders issued during the war authorizing the use of certain specified interconnections for the purpose of strengthening the power supply for the war effort can be used to and including March 15, 1946, without affecting the status of the companies as "public utilities" under the Federal Power Act. When the wartime interconnections involved in the commission's recent action were originally authorized, some of the orders specified that the exemption was to extend for a period of not to exceed ninety days, and in others for six months after the cessation of the "present war hostilities," before the use of such interconnections would subject the companies to the jurisdiction of the commission.

The companies affected by the order are United Illuminating Company; New Bedford Gas & Edison Light Company; Ohio Public Service Company and Ohio River Power, Inc.; Connecticut Light & Power Company; Texas

Electric Service Company; Texas Power & Light Company; Wisconsin Electric Power Company; Puget Sound Power & Light Company; Public Service Company of Northern Illinois; Columbus & Southern Ohio Electric Company; Houston Lighting & Power Company; Texas Power & Light Company; Texas Electric Service Company and Community Public Service Company; Southern Indiana Gas & Electric Company; Commonwealth Edison Company; Illinois Northern Utilities Company and Western United Gas & Electric Company; Kansas Electric Power Company; Kansas Power & Light Company; Wisconsin Power & Light Company; Wisconsin Gas & Electric Company; Central Ohio Light & Power Company; Texas Power & Light Company; Texas Electric Service Company; and Community Public Service Company.

FPC Amends Certificate

THE Federal Power Commission, by modifying and amending the original certificate of convenience and necessity issued on July 5, 1945, has authorized the United Gas Pipe Line Company to transport a maximum of 172,000 MCF of natural gas per day from the Carthage, Texas, gas field to the Monroe, Louisiana, gas field to serve its present customers, the Memphis Natural Gas Company, Southern Natural Gas Company, and Mississippi River Fuel Corporation, and to United Gas Corporation for resale in Calhoun, Louisiana.

This amount of gas is in addition to the 114,000 MCF per day which United was originally authorized to transport for the Tennessee Gas & Transmission Company over the Carthage-Sterlington pipe line. According to the company's application, the transportation of natural gas from the Texas field is necessary to secure a new source of supply as its reserves in the Monroe field decline.

FPC Authorizes Purchase

THE Federal Power Commission recently authorized the Trinidad Electric Transmission, Railway & Gas Company, Trinidad, Colorado, to purchase from its affiliate, the New Mexico Power Company, Santa Fe, New Mexico, electric facilities comprising the latter's Dawson division located in Colfax and Mora counties, New Mexico. The base price will be $526,101 in cash.

The new Mexico Public Service Commission has approved the proposed transaction.

The facilities to be acquired are now interconnected with the Trinidad Company's system. They include a 4,000-kilowatt steam-generating station, about 60 miles of transmission lines, and distribution facilities.

According to the Trinidad Company's application, the purchase price is based on the original cost of the facilities less depreciation at December 31, 1944, and adjustments will reflect improvements and retirements made and depreciation accrued between that time and the closing date of the transaction.

SEC Approves Refunding

SUBJECT to certain conditions, the Securities and Exchange Commission on November 29th gave unanimous approval to the proposal of United Light & Railways Company and its subsidiary, Continental Gas & Electric Corporation, to redeem their outstanding debentures, with $75,000,000 which banking groups have agreed to loan on promissory notes.

The SEC also sanctioned related transactions, including Continental's plan to issue additional shares of common stock to present holders of such securities, with the proceeds being used to redeem all of Continental's publicly held 7 per cent prior preference stock at the call price of $110 a share, plus accrued dividends.

Of the $75,000,000 Railways will borrow $15,000,000 from the Bankers Trust Company and associates, and with it will redeem all of its outstanding 5½ per cent debentures at 102 per cent, plus accrued interest. Continental will borrow the remaining $50,000,000 from a banking group headed by the National City Bank of New York, and will use the sum to redeem all of its outstanding 5 per cent debentures at 101½ per cent, plus accrued interest.

Resumes Duties

MAJOR GENERAL LEWIS A. PICK, builder of the Ledo road, will return as Missouri river division engineer at Omaha, it was announced recently.

General Pick is author of the Pick plan for multiple-purpose development of the Missouri river. He left his post at Omaha in September, 1943, to build the Ledo road—later officially named the Stilwell road—from Burma across the mountains into China.

He will succeed Brigadier General Roscoe C. Crawford, division engineer for two years. General Pick also will, as did General Crawford, head the Missouri Basin Inter-Agency Committee, an organization of state governors and representatives of Federal agencies now coördinating river development work. General Crawford will become assistant chief of engineers in Washington.

Opposed to CVA

THE Inland Empire Waterways Association voted last month to oppose creation of a Columbia Valley Authority in a resolution adopted at the group's twelfth annual meeting. All officers were reëlected by the sixty-four delegates from Oregon, Washington, and Idaho attending.

The resolution opposing a CVA proposed that Columbia basin resources be developed by existing state and Federal agencies.

In other resolutions adopted the organization

reaffirmed support for a program to construct the McNary dam at Umatilla rapids in Oregon and a series of dams on the Snake river; urged authorization for construction of dams at The Dalles, John Day, and Arlington, Oregon; reaffirmed a recommendation that the program for comprehensive development of the Columbia and Snake rivers remain in the hands of the United States Army Corps of Engineers.

New FPC Schedule Delays Parley

THE Independent Natural Gas Association of America recently announced another postponement of its annual meeting at Houston, Texas, from December 10th to January 28th, to conform with the new date set for the Federal Power Commission's natural gas hearings there.

FPC has announced three additional hearings: February 11th at Biloxi, Mississippi; February 19th at Chicago; and March 19th at Charleston, West Virginia.

Organize to Buy Utility

REPRESENTATIVES of 13 public utility districts and coöperatives operating in eastern Oregon and eastern Washington, recently meeting at The Dalles, Oregon, organized Interstate Electric, Inc., to purchase all Oregon and Washington properties of the Pacific Power & Light Company.

Charles Baker, of Walla Walla, Washington, who was elected president of the group, reported that one of the largest banks in the country had promised financial aid if legal requirements can be met. He did not name the bank. Mr. Baker was authorized to proceed with negotiations for the purchase, to confer with the Securities and Exchange and Federal Power commissions, and to frame financial plans.

Paul B. McKee, president of Pacific Power, characterized the incorporation of Interstate Electric as "just another attempt by a self-appointed public power group to get control of an efficient, tax-paying business enterprise without the public having anything to say about it."

Interstate Electric's articles of incorporation set forth that its capital stock shall consist of $22.

"The men behind this $22 corporation," Mr. McKee said, "are now trying to rig up a device to socialize our business in that and other areas which have rejected political ownership and management."

FPC Sets Hearing

THE Federal Power Commission was scheduled to hold a hearing December 17th in the commission's offices at Washington, D. C., to determine the reasonableness of interstate wholesale electric rates charged by Pennsylvania Water & Power Company and by its wholly owned subsidiary, Susquehanna Transmission Company of Maryland.

Following the filing of petitions by the Maryland Public Service Commission and by counsel for the mayor and city council of Baltimore, Maryland, county commissioners of Baltimore county, Maryland, Bethlehem-Fairfield Shipyard, Inc., and Rustless Iron & Steel Corporation, the commission by its order of September 1, 1944, instituted an investigation of the Pennsylvania Company's rates. On October 3, 1944, the investigation was enlarged to include the rates subject to FPC jurisdiction charged by Susquehanna Transmission Company of Maryland.

Both the Pennsylvania Public Utility Commission and the Maryland Public Service Commission have been granted permission by the FPC to intervene in the proceedings; also, Consolidated Gas, Electric Light & Power Company of Baltimore.

If, after hearing, the FPC finds that the rates charged by either company are "unjust, unreasonable, unduly discriminatory, or preferential," the commission will set rates to be observed thereafter.

The Pennsylvania Water & Power Company owns and operates facilities, among others, used for the transmission and sale at wholesale (1) of electric energy generated in Pennsylvania and transmitted to Maryland and the District of Columbia, and (2) of electric energy generated in Maryland and the District of Columbia and transmitted to Pennsylvania.

SEC Announces Hearing Date

THE Securities and Exchange Commission recently set January 3rd for a hearing on amendments to the dissolution and liquidation plan of National Power & Light Company which proposes settlement of all claims involved in the plan.

The amendment calls for settlements of the claims of National and its subsidiaries against their parent, Electric Bond and Share.

Bond and Share would pay National $525,000 in cash. National would use part of this to pay its subsidiaries an amount equal to that portion calculated to represent net profit in all fees paid by them to two Bond and Share subsidiaries, Ebasco Services, Inc., and Phoenix Engineering Corporation.

The subsidiaries and portion of fees calculated as net profit, before deducting the fees, are: Birmingham Electric Company, $44,000; Carolina Power & Light Company, $70,000; Lehigh Valley Transit Company, $13,000; Pennsylvania Power & Light Company, $183,000; Houston Lighting & Power, $89,000; and West Tennessee Power & Light Company, $7,000.

National also proposes to distribute $347,086 to former preferred stockholders of Tennessee

Public Service Company, which was dissolved.

National has asked the SEC to approve payment of $80,000 for legal fees, and, if the plan is approved, to apply to a court for enforcement.

Charge Nationalization Would End Competition

BRITISH transportation officials told the Labor government recently that its plan to nationalize railroads and other long-distance hauling services would eliminate all competition and "lead to chaos."

At a meeting to protest the public ownership proposal, Captain L. D. Gammans, Conservative member of Parliament, said the country should "wake up and understand what is going to happen" if the government consolidates road transport "into one gigantic state-controlled monopoly."

E. B. Howes, chairman of the National Conference of Road Transport Associations, said that if the consolidated industry's employees should strike it would "paralyze the country and bring its commerce to a complete standstill."

Sir Malcolm Campbell, former race driver, told the meeting that the nationalization of transportation was a "terrible thought." "You have got to fight it with every weapon you have," he said.

Alabama

Bus Petition Denied

THE Bessemer city council last month denied the petition of the Birmingham Electric Company to operate busses in the city limits.

The Birmingham Electric Company is operating busses from Birmingham to the city limits of Bessemer, but has not been given a franchise to come into the city. Two other bus lines are operating busses between the two cities.

Arkansas

Co-op Held to Be Utility

THE Ark-La Electric Coöperative is a public utility subject to regulatory provisions of Act No. 342 of 1937, Circuit Judge Auten held recently in a ruling affirming findings of the old state public utilities commission.

The former commission, in an order of December 14, 1944, held inapplicable a clause of Act No. 342 exempting rural coöperatives from certain provisions and directed the coöperative involved to comply with terms of the act. The complaint was filed with the commission in behalf of four private utilities, Arkansas-Missouri Power Corporation, Southwest Gas & Electric Company, Arkansas Power & Light Company, and Oklahoma Gas & Electric Company. Petition for review of the commission's order was filed in circuit court in behalf of the coöperative.

In 1942, Ark-La received authority to construct and operate electric transmission lines from the site of the Jones Mill aluminum plant on Lake Catherine, northwest to the Oklahoma-Arkansas state line north of Fort Smith. The transmission line crossed areas served by Oklahoma Gas & Electric Company and the Arkansas Power & Light Company.

The four utilities charged the coöperative with operating as a public utility without complying with provisions of Act No. 342, from which the co-op contended it was legally exempt.

Hearing Indefinitely Postponed

THE Federal Power Commission has postponed to a date to be fixed later the hearing previously set for December 4, 1945, in Washington concerning accounting adjustments to be made by the Arkansas Power & Light Company, Pine Bluff, Arkansas.

The hearing was set by the commission to determine accounting adjustments made or proposed to be made involving $21,174,256 which the FPC staff, after examining the books and records of the company, has recommended be eliminated from the plant accounts of the Arkansas Company as of January 1, 1937.

California

Utilities Get More Power

APPROVAL by the Secretary of the Interior of three new contracts for the sale of hitherto unused Boulder dam power to southern California utilities was announced last month by the general manager of the Metropolitan Water District.

Under the new contracts the Metropolitan Water District's unused firm energy at Boulder City, Nevada, and the equivalent of all the district's energy from Parker power plant is to be sold to the Los Angeles Department of Water and Power, the Southern California Edison Company, Ltd., and the California Electric Power Company until the year 1987.

Negotiations on the new contracts had been under way for two years, and when executed will result in benefits to the people of the Metropolitan Water District totaling approximately $47,000,000, Julian Hinds, general manager of the district, stated.

Colorado

Seeks to Force Gas Rate Refunds

CONTENDING the whole future of natural gas rate reduction to Colorado consumers might be jeopardized if such a policy is sustained, the state public utilities commission sought recently to compel Citizens Utilities of Rocky Ford to change its stand and make refunds to consumers of interstate gas rate reductions passed to the company.

The Colorado utility serves gas consumers in the Las Animas, Swink, and Rocky Ford area and has contended that money, refunded under the Federal Power Commission case against the Colorado Interstate Gas Company, belongs to the company and not to the consuming public.

The amount of refunds involved is $176,278, which was the share of the area served by the Citizens Utilities in the outcome of lengthy litigation in the Federal courts over rates charged on interstate shipment and sale of gas by the Colorado Interstate Gas Company.

Henry Sherman, chairman of the state commission, said the company was the only Colorado utility firm to take the position that the money should not be refunded to the consumer. He explained, however, the company had finally decided to pass on 50 per cent of the rate reduction to the consumers.

Connecticut

Gas Workers End Strike

A 6-HOUR walkout of ninety employees of the gas production unit of the Bridgeport Gas & Light Company ended on November 20th, two hours before exhaustion of the gas supply, when union officials and company officials agreed to arbitration of the workers' grievances.

The grievance that precipitated the walkout was the assignment of a returned war veteran to work other than the meter reading he had formerly done. Philip J. Koons, of the state labor department, negotiated the return to work pending arbitration.

Exhaustion of the gas supply would have necessitated the closing of valves at all outlets.

Indiana

Hearing on Trolley Fares

A PUBLIC hearing was scheduled to start December 17th by the state public service commission on the new fares charged by Indianapolis Railways, which would end a 3-month trial December 15th. The transit company requested the hearing on November 30th. In setting the date, a commission spokesman said the present fares would continue until after the hearing, which was expected to take several months.

The petition asked that the commission determine the "current, fair cash value" of all the utility's property "actually used and useful" in its transportation service and determine other facts necessary to fix "just and reasonable" rates. It was pointed out that expenses have risen so sharply in recent years that the present fares are needed.

Kentucky

Free Transportation Upheld

FREE transportation for rural pupils attending private and religious schools was approved by the court of appeals last month. The 1944 legislative act empowering such voluntary service by counties was upheld by the state's highest court on grounds of health and safety.

The act provides the counties may pay for the service out of their general funds, but does not require them to do so. In upholding it, the court specifically reaffirmed its previous ruling that a 1940 act requiring such transportation to be paid for from school funds was unconstitutional. That presented "an entirely different question," the court declared.

The 1944 act was declared unconstitutional by Fayette Circuit Judge Chester D. Adams in a test suit brought by Mrs. Susan B. Henry. Judge Adams had held the 1944 act violated five different sections of Kentucky's Constitution, including those prohibiting use of taxes for private purposes and forbidding state aid for private organizations.

Overruling all Judge Adams' views on this point, the appellate court said it previously had approved use of tax money to aid in such cases as those of dependent children, and declared that at times it is difficult to draw a line which limits use of taxes, but added: "If it be doubtful and the legislature has seen fit to exercise the power, the judiciary should not interfere."

The opinion was written by Judge E. Poe Harris and approved without dissent by the whole court except newly appointed Judge Thomas S. Dawson. Since he voted for the act as a member of the 1944 general assembly, he declined to take part in ruling upon it.

City Granted Hearing

THE state public service commission on November 30th received a motion from Louisville to reopen the city's rate reduction case against the Louisville Gas & Electric Company, and set December 4th to hear evidence supporting the city's contention that it has new evidence of sufficient import to justify another hearing.

The motion was filed by Lewis C. Carroll, assistant director of law, representing the city, over objections of Charles W. Milner, counsel for LG&E. Milner charged that the city, believing it had lost the case, "is now trying to put new life in a dead horse."

Possible rate reductions in Louisville are involved in two separate actions before the commission, and that fact was the principal core of controversy between Carroll and Milner, it was said.

The first action was brought last summer by Mayor Wilson W. Wyatt, who pleaded for a rate reduction commensurate with $3,400,000 excess profits taxes he charged LG&E paid the Federal government in 1944. The city has completed that case in chief and the commission now has under submission LG&E's motion to dismiss it. It is this case which Carroll is trying to reopen for submission of new evidence.

Carroll's motion to reopen the case did not reveal the city's new evidence, but when Chairman Thomas B. McGregor and Commissioner Charles E. Whittle asked him to state the general nature of it, Carroll replied it would consist principally of LG&E's operating experience since VJ-Day.

To Get Natural Gas

THE Kentucky Natural Gas Distributing Company was chartered last month to furnish gas to eight central Kentucky cities. The new company, which will have headquarters in Frankfort, will supply gas to Bardstown, Burgin, Harrodsburg, Lancaster, Lawrenceburg, Lebanon, Springfield, and Sanford.

John E. Buckingham, former Kentucky state treasurer, and vice president of the new company, which has $100,000 capital stock, said it would expend $5,000,000 in bringing gas for the first time to the eight communities.

The company will purchase natural gas from the Tennessee Gas & Transmission Company of Houston, Texas, which recently completed a pipe line into Tennessee.

The company is a Stone & Webster subsidiary, Buckingham said, but the one chartered last month is not affiliated with it. The charter application disclosed that its principal owner is J. R. Horrigan, of Houston, its president. Other incorporators in addition to Horrigan and Buckingham are D. Dean Edwards, Neal R. McKay, and Ben O. Law.

The charter authorizes the company to produce and distribute natural and artificial gas but Buckingham said its intentions were to buy natural gas and sell it.

Co-op Allowed to Extend Lines

THE state public service commission last month authorized the South Kentucky Electric Coöperative to construct 990 miles of extensions to serve 2,543 customers in 8 counties at a cost of $1,020,000.

The co-op, which has headquarters at Somerset, will extend its lines in Adair, Casey, Clinton, Lincoln, McCreary, Pulaski, Russell, and Wayne counties.

P. H. Hyden, secretary of the state commission, said there were no protests against the extension.

Maryland

Suit Filed on Trolley Plan

THE circuit court on November 27th was asked to enjoin the city from entering into any voluntary agreement with the Baltimore Transit Company in connection with the company's plan to substitute busses for trolley cars unless the agreement calls for continued pay-

ment by the utility of paving costs and the 3 per cent gross receipts tax.

The injunction suit was filed by Paul Robertson, chairman of the Republican city committee, through the law firm of Bartlett, Poe & Claggett. Judge Joseph Sherbow gave the city of Baltimore until December 27th to show cause why the injunction should not be issued.

Rate Reduction Refused

CONSOLIDATED GAS, ELECTRIC LIGHT & POWER COMPANY'S present electric and gas rate schedules have been upheld by the state public service commission which recently refused to order any reduction in rates. In taking its action the commission dismissed the rate reduction applications filed both by the people's counsel and by the city. (See, also, page 867.)

The commission also set the fair value of the company's properties for rate-making purposes at $148,172,126.

The commission, in announcing its decision, stated that it would order the company to reduce its electric rates in the event its wholesale power purchase costs should be lowered as a result of proceedings now before the Federal Power Commission.

Michigan

Gas Bills Cut

ALL purchasers of gas from the Michigan Consolidated Gas Company will enjoy a 53 per cent cut in their December bills under an order handed down by the state public service commission last month.

The order, announced by William J. McBrearty, commission chairman, affects only the December bills. It constitutes a diversion to the consumers of money which, for the most part, would otherwise go to the Federal government under the excess profits tax law.

Coming on top of a 20 per cent reduction in Detroit rates ordered a week previous, the new commission order means that December gas costs for most domestic consumers in the city will be two-thirds lower than anticipated.

Involved in the November 29th order is the sum of $1,500,000 which will be cut from the corporation's December revenues.

Commission statisticians said that the actual cost to Michigan Consolidated will be $264,000, the remainder of the $1,500,000 being made up of cash which would otherwise be paid in Federal taxes. The $264,000 is made available by commission action in disallowing an appropriation of that amount, within the corporation, for deferred maintenance.

In return for depriving the company of its maintenance saving, the commission agreed to permit, in the near future, the corporation to amortize deferred maintenance costs over a period of years, if such amortization is necessary to prevent future distortion of annual operating results.

Missouri

Valley Board Reports

THE Missouri Valley Commission made its report to Governor Phil M. Donnelly on November 28th. The commission was appointed under legislative act to study the Tennessee Valley Authority and the Missouri valley with a view to recommendations as to the advisability of an authority similar to TVA for the Missouri basin.

It reported that it had found a necessity for basin-wide control, development, and utilization of the Missouri valley water resources. It said also creation of a regional authority to execute the plan was proper.

The report combined the widely divergent views of members of the commission. It is the result of many compromises and in rather cautious language it contained only those recommendations on which all the members could agree. Although finding that TVA is of "vast benefit" to the area it serves, the commission did not recommend the creation of a Missouri Valley Authority. It held that there were objectionable features in the bills pending in Congress for the creation of an MVA.

New York

Utility Work Authorized

EXPENDITURE of $22,500,000 by the Consolidated Edison Company of New York to complete modernization of its electric generating station on the East river was authorized last month by the board of trustees. Work on the project was started in 1935.

Ralph H. Tapscott, the president, said the authorization was part of an expansion program that would cost $120,000,000 in the next five years. By 1950 the company will have increased its generating capacity 350,000 kilowatts, or 15 per cent. Gas and steam production facilities will be enlarged and distribution systems for electric, gas, and steam will be reinforced and extended.

Court Asked to Remove Board

REMOVAL of the entire board of directors of the Third Avenue Transit Corporation and election of an entirely new board was asked in an affidavit filed recently with Supreme Court Justice Samuel H. Hofstadter by New York State Attorney General Nathaniel L. Goldstein.

In the affidavit, the state attorney general reiterated charges made in his previous affidavit that "the internal affairs of the Third Avenue Transit Corporation present a picture of double dealing, of abuse of trust, and of disruption, which, if not checked and corrected, will lead to chaos in essential and vital transit service and jeopardize the investment of the security holders."

Mr. Goldstein stated that he took his action on behalf of the people of the state.

Oregon

CVA Draws Strong Veto

OREGON'S Reclamation Congress went on record as strongly opposing the establishing of a Columbia Valley Authority at the closing session of its recent annual meeting in Portland.

Declaring the nationalization of projects in the river system of the West a "menace to state rights, self-government, and the principle of home rule," the congress approved two resolutions striking directly at the proposed CVA.

In a resolution treating the subject generally, the Oregon organization went on record as opposing "the policy of the Federal government taking and keeping control over the consumptive uses of water in the West" and urged Oregon's congressional delegation to strongly oppose such a policy.

Relating particularly to the proposed CVA, the other resolution reaffirmed the congress' past stand in regard to such legislation and further placed the Reclamation Congress in opposition to "that philosophy of government which would supersede and replace control by the people of the affected states of their basic natural resources by an untried remote control Federal system."

In connection with the congress' stand on the CVA legislation, E. E. Lage, Hood River, president of the organization, declared that statements charging the congress with being influenced by private interests in its attitude toward the question were untrue. Lage further stated that if national congressional machinery dealing with reclamation, irrigation, drainage, and related problems could be speeded up there would be absolutely no need for any valley authority.

Texas

City Purchases Utility Plant

AGREEMENT has been reached for the purchase by the city of Jasper of the Gulf States Utilities Company's electric properties in Jasper for $120,000 in cash.

Included are the generating plant, real estate, and distribution lines within the city and rural lines in the vicinity. The agreement was reached on November 22nd between the city council and R. S. Nelson, Gulf States president, Mayor Marvin P. Hancock said.

The city expected to take over operation of the properties within thirty days.

Utah

State Orders Full Probe

CHARGING that the Mountain Fuel Supply Company is and has been charging "unjust, unreasonable, and unlawfully discriminatory" rates for natural and manufactured gas service, the state public service commission last month ordered a general rate investigation.

The commission's order came as hearings were resumed at the state capital on a company petition to lower domestic and commercial gas service rates and raise rates charged to industrial users. After ordering the general investigation, Donald Hacking, commission chairman, continued the hearing until February 18th. The commission also denied a motion presented by attorneys for industrial gas users asking dismissal of the fuel company's petition.

The Latest Utility Rulings

Established Rate Base Not to Be Upset For Original Cost Claims

THE Maryland commission, in dismissing a complaint against rates of the Consolidated Gas, Electric Light & Power Company of Baltimore, refused to adopt an original cost rate base in place of a rate base established in the past. Depreciated value had been fixed in 1913, in 1923, and in 1926 [PUR1927B 141]. It was used again in 1929 [PUR1930A 148] and in all informal proceedings relating to rate adjustments up to the present time.

Findings of value resulting from thorough investigation, at a time when relevant information pertaining to the preregulation period was in much closer perspective than now, and again after a lapse of tne years of regulation, should not, in the opinion of the commission, be disturbed without a showing of failure to consider essential evidences of value or undue dependence upon improperly included evidence.

It had been urged in support of original cost that when the rate base was last determined the commission was controlled by the doctrine of Smyth *v.* Ames, which required consideration of reproduction cost. The company, on the other hand, relied upon the Maryland statute which mentions only "fair value."

The commission thought it had acted reasonably and in conformity with the spirit of the Maryland law, and the rate base established in 1923 was determined in conformity with the Maryland law. The commission believed that its practice since that time of bringing the rate base up to date by adding to the 1923 base the net additions of property at cost and deducting the increase in the depreciation reserve was a proper one and should be continued.

A system of accounting for depreciation requiring a determination of the annual rate and annual accruals to the reserve, when applied to a property from the beginning of its use, should produce a reserve which would, at any time, indicate the amount of accrued depreciation in the property still in service. The commission, after stating this principle, concluded that the depreciation reserve, including disputed additions, did not exceed reserve requirements, and the reserve was accepted as the best evidence of accrued depreciation.

The practice followed in the past in the regulation of this utility, to determine a rate base for the combined services, was continued. The commission ruled that complainants were not being subjected to any unreasonable discrimination and that electric rates were just and reasonable without such reduction as might be accomplished by increasing rates for gas and steam-heating services.

It was said:

> Gas and electricity are distributed by the company throughout the city of Baltimore and its suburbs to substantially the same group of domestic and commercial customers. Gas is used principally for cooking and heating. To the extent that both services are used by a customer, the good effect to that customer of a reduction in electric rates would be offset by an increase in gas rates.
>
> The company is an integrated operating unit, and the substantial economies resulting from the operation of the several services by the one organization are beneficial to all customers. . . .
>
> The steam-heating business, established for the primary purpose of replacing private steam plants which were being used for generation of electricity as well as for heating, has been a contributing factor in increasing the electric load and we believe it

should be treated as an adjunct of the company's electric service.

Customer contributions were excluded from the rate base with the statement that their inclusion would result in treating them as an investment by the company instead of by customers. A return of not less than 5½ per cent and not more than 6 per cent was declared reasonable. Present rates for street lighting were upheld as not producing more than a reasonable proportion of present income.

A fuel rate adjustment clause for industrial service was not changed, but the commission observed that a variation in the cost of fuel affects the cost of serving all classes of customers and should be shared by all in proportion to the use of the service. This equitable distribution of cost can be accomplished only by a general increase of rates or a surcharge. The commission said further:

> . . . the use of a device which necessarily overburdens a particular class should be minimized, as it will destroy the equitable relationship which has been fixed at the time of the general rate review. Therefore, when a fuel adjustment clause is employed and of necessity made applicable only to a certain class of service, a relatively permanent or continuing increased cost of fuel, of substantial amount above the base price, should be accounted for by some means of distributing the increase generally, and the current price of the fuel should then become the base for application of the fuel clause adjustment.

Re Consolidated Gas, Electric Light & Power Co. of Baltimore (Case Nos. 4661, 4648, Order No. 41554).

Rate Increase Not to Be Based on Contingent Wage Increases

An application for authority to increase telephone rates was denied by the Missouri commission with the statement:

> We are of the opinion that, if it is necessary for the company to pay increased wage scales in order to retain its employees, the rates to be charged for service should be sufficient to provide the company with such funds. It should be understood, however, that we do not propose to permit rates to be increased in order to provide the company with funds to be used for contingent wage increases to be made at some future time, as wage scales are gradually accelerated, according to a schedule. As stated previously, the company's showing as to what its expenses actually will be, upon the inauguration of the wage scales which it has sought authority to place into effect, is not definite enough for us to determine the additional revenue required. For that reason, it appears that authority to increase rates should be conditioned upon a showing as to the actual annual payment that will be made by the company upon receipt of the authority to increase wage rates and as to the additional payments due to increases in personnel.

Proposed increases in wages had not yet been approved by the War Labor Board. The commission concluded that the company should be authorized to file revised rate schedules, subject to review of the commission, which would yield an increase in annual revenues not greater than the actual annual increase in operating expenses occasioned by additional personnel and the wage schedules to be inaugurated, which rate schedules after review by the commission should become effective on such date as might be authorized by the commission.

A representative of the Office of Price Administration testified in this case that stabilization of prices, wages, and salaries affecting the cost of living was necessary in the interest of national defense and security, and because of the need for effective prosecution of the war. Hardships might result to the nation's citizens, he said, from inflation and the greatly increased cost of the war that would attend the lack of strict price control. Prevention of small increases in prices and rates was said to be a significant matter in that the cumulative effect of millions of small increases in prices and other costs throughout the economy starts an inflationary spiral. The commission, referring to his testimony, said:

> He defined inflation as a general across-

the-board increase in the level of prices, stating that inflation is caused by individual price increases of whatever size that are exacted for an exchange of goods or service in the period of general rise in prices.... It was also stated that there is no connection between inflation and the rate of profit that a company is earning, inflation being a price level matter and not a profit matter.

Re Citizens Telephone Co. (Case No. 10,606).

Damages for Discrimination Not Measured By Differences in Rates Charged

THE supreme court of Texas reversed the action of the Texas Court of Civil Appeals in United Gas Corp. v. Shepherd Laundries Co. (1944) 55 PUR(NS) 351, 181 SW2d 929, where judgment for a customer was affirmed when based on the difference between rates charged this customer and lower rates charged others. There was no claim that the customer had paid more than was due under an established rate. Rates for residential and commercial consumers had been fixed by municipal ordinance. The fixing of industrial rates (those involved here) had been left to the company.

The commission, said the court, has uniformly refused to fix rates for the sale of gas to industrial consumers. The court quoted the following from the commission opinion in *Re* Community Nat. Gas Co. (Tex 1936) 15 PUR(NS) 149, 164:

> It is not our purpose or intention in this proceeding to fix the purchase price or sale price for industrial gas for the reason that the sale price for industrial gas fluctuates along with the price of other competitive fuels.

The court reviewed the history of the law relating to inequalities in rates and the measure of damages for discrimination in charges, showing the development of the common law and statutory rules. It was pointed out that the statutory prohibition against discrimination does not provide a penalty or fix a measure of damages for discrimination. It is patterned more nearly after the Interstate Commerce Act, and, said the court, must be similarly construed. It contains no language which may reasonably be interpreted as arbitrarily making the lowest rates illegal rates. The court continued:

> It merely declares discrimination to be unlawful and leaves the injured party to the same remedy for damage as existed under our interpretation of the common law. Thus, before one may recover for mere discrimination he must allege and prove his loss as in tort. Notwithstanding this fact, the two courts below have allowed a recovery under Article 1438 for discrimination without either allegation or proof of actual loss. Such courts have erroneously interpreted the statute as though it contained language to the effect that when a corporation violates its provisions such corporation shall be liable to the party discriminated against for the difference between the rates charged him and the lowest rates accorded the favored party. In other words, the same principles which govern damages for an overcharge have been applied herein in a case involving merely discrimination. This, we think, was error.

United Gas Corp. v. Shepherd Laundries Co. Inc. 189 SW2d 485.

State Jurisdiction over Railroad Construction

THE Missouri commission has issued a report and order upon motions to strike a portion of answers by railroads in a proceeding to obtain a certificate of public convenience and necessity for the construction, acquisition, and operation of a terminal or switching railroad in Missouri. Two railroads had filed a protest and answer to the application, and the applicant company moved to strike

from the answers the following language:

> That the Interstate Commerce Commission has exclusive jurisdiction of an application for a certificate of convenience and necessity for the construction or operation of a railroad in interstate commerce.

It was the opinion of the commission that it had jurisdiction to grant a certificate of public convenience and necessity for the construction and operation of a purely intrastate railroad, and that such a certificate must be obtained. Although such a railroad might be constructed and commence operating under a state certificate, before it could commence to handle interstate shipments it must also obtain a certificate from the Interstate Commerce Commission.

This being the opinion of the commission, the application was set for hearing upon the merits, but the commission did not sustain the motions to strike for the reason that the quoted language appeared to be a correct statement of an abstract proposition of law. Being nothing more than that, the commission failed to see where it could in any manner prejudice the rights of the applicant. Furthermore, the portion of the answers could conceivably be necessary in order that the protestants might make some point upon which they wish to rely. Technical rules of pleading and evidence are not followed in commission proceedings. *Re North Kansas City Bridge & Terminal Railroad Co. (Case No. 10,559).*

Repair Bills Not Enforceable by Denial of Service

THE supreme court of Vermont upheld an injunction to restrain removal of an electric meter where a customer paid his bill for current but refused to pay for repairs to a refrigerator. The decree in the lower court had ordered that the utility company recover from the customer $14.70 for labor and materials furnished. The company was enjoined from discontinuing service.

The customer had purchased a used electric refrigerator and taken it to the company's place of business to have it put in running order. The refrigerator was put in good running order and was delivered in good condition to the customer. It then ran about one day when it stopped and was repaired by another company.

Commenting on the statute making it the duty of a public service company to sell electricity to any person within the territory served by it who wishes to purchase the same, the court said:

> While the electric energy is to be sold to the customer, that is paid for by him, there is nothing in the statute directly or by implication that gives such public service corporation a right to refuse to furnish electric service to a customer in its territory because the customer is refusing to pay a bill for some collateral service such as repairing an electric refrigerator. Since the plaintiff was ready and willing to pay for the electric service demanded and had paid the defendant for all such service furnished at the time the defendant refused to furnish further service and removed the meter from the plaintiff's premises, such refusal and removal were without right or authority of law.

Ashline v. Public Electric Light Co. 4 A2d 164.

New Independent Cabs Not the Remedy for Inadequate Taxicab Service

AN application by a taxicab operator in the city of Philadelphia for authority to operate five additional cabs was dismissed by the Pennsylvania commission after a review of the taxicab situation in the city and the commission's

policies. Protests had been filed by the Yellow Cab Company and by a taxicab drivers' union.

The history and experience of taxicab operations in Philadelphia, said the commission, exemplified the validity of the principle firmly established in Pennsylvania law and practice that unlimited competition between utilities is ultimately unwholesome for the community affected. Yellow Cab Company had formed and had instituted its coördinated city-wide service by means of stands throughout the city, with telephone connections at a central garage. The disappearance of all fleet operating companies, with the exception of this company, said the commission, showed clearly that competitive conditions in Philadelphia imposed an uneconomic burden resulting in dislocation of the service situation. The commission continued:

> The commission has observed over the years that not only in Philadelphia, but in other communities of the commonwealth, competitive fleet operation has proved impractical to a greater or less degree and in relation to both rates and service has caused difficulties to the public.

Evidence as to occasional delays in obtaining taxicab service had been introduced, but such delays, said the commission, were inevitable, particularly during a war period when governmental operating restrictions were imposed. None of the delays experienced after telephoning for a cab would be eliminated by approval of the application since the applicant, having no stand, could not be reached by telephone. The remedy would lie in better postwar service by the cab company, not more service to be performed by the applicant.

The commission concluded, however, with this warning as to service requirements:

> The investment in Yellow Cab Company is well over a million dollars, hundreds of thousands of dollars of which are represented by real estate and other fixed property assets. It is a business with a large fixed plant investment which cannot readily be removed from Philadelphia to another city, and which is subject to almost complete destruction by competition. Nevertheless, we are not committed in any way or to any extent to protection of this investment regardless of the effect on the public desiring to patronize the company. Our position is that until the Yellow Cab Company service, supplemented by that of other existing certificated operators, is clearly shown to be inadequate, it is to the interest of the riding public of Philadelphia that Yellow Cab Company shall not be subjected to competition which will impair its ability to render public service.

Re Graham (Application Docket No. 54983, F 2, Am-B).

Authorization of Motor Carrier Transportation Of Household Goods

An application for a certificate of public convenience and necessity authorizing the transportation of household goods between any and all points and places within the state of Montana was granted by the board of railroad commissioners. Testimony disclosed that the movement of household goods is a peculiar transportation service in itself. Many things arise in connection with the movement of such goods which do not arise in movement of other commodities. That in itself, said the board, has a bearing upon the showing of convenience and necessity which must be made.

An objection to the sufficiency of the application was overruled. The statute requires a statement of the public highway or highways over which and the fixed termini between which, or the route or routes over which, the applicant intends to operate, if the same are fixed. The statute, however, goes on to say: "or the particular city, town, station, or locality from and/or to which the applicant intends to operate."

It was noted that the last portion of the section did not say only city and town, but also contained the word locality. The board continued:

The application is between any and all points and places in the state of Montana. These words sufficiently describe the places from and to which the applicant intends to operate, in accordance with the statute. Subsection 2 of that statute is written in the disjunctive and the applicant may specify the routes over which he will operate, or he may state the places "from and/or to which" he intends to operate, which was done in this case.

A class C carrier, under state laws, is one who transports commodities or persons under a remuneration fixed by agreement. It has no regular routes or fixed termini. Such a carrier does not serve the public in general. Therefore, the board held, it is only necessary to show that there are certain persons for whom the applicant desires to perform transportation service, and that it would be convenient and is necessary that transportation service be rendered to those persons. It is not contemplated that an applicant for such a permit would necessarily make out a case showing convenience and necessity between all the points intended to be served. *Re Great Falls Transfer & Storage Co. (Docket No. MC-318, Order No. 491).*

Use of Natural Gas for Boiler Fuel Excluded From FPC Authorization

TEMPORARY authorization granted to Northern Natural Gas Company by the Federal Power Commission to construct and operate facilities for the transportation and sale of additional volumes of natural gas to Iowa Electric Light & Power Company was made permanent, subject to terms and conditions. Operation of such facilities is limited to the delivery of natural gas solely for operation of pilot burners, ignition purposes, and as emergency stand-by in case of breakdown of coal-handling and coal-burning equipment at the Boone plant.

An application for authorization to operate the facilities for the delivery of natural gas to Iowa Electric for use by the latter as boiler fuel at its Boone electric generating plant was dismissed without prejudice. Several railroads and representatives of coal and labor interests had intervened in the hearing. They contended that it would be inconsistent with the public interest to permit the use of natural gas as boiler fuel where adequate supplies of coal are available. *Re Northern Natural Gas Co. (Docket No. G-533).*

Other Important Rulings

A RULING of the Interstate Commerce Commission that a subsidiary of a holding company was a contract carrier, and required to obtain a permit to operate, rather than a private carrier, was sustained where the subsidiary received from subsidiaries of the same holding company a rental charge and an additional charge for each mile operated for each vehicle, and also received payment from common carriers and contract carriers to which it leased its vehicles from time to time. *Schenley Distillers Corp. et al. v. United States, 61 F Supp 981.*

A Federal District Court held that it had jurisdiction of an action against a railroad company's trustee for the amount of a freight overcharge, although in such cases resort is usually had in the first instance to the Interstate Commerce Commission. *Morningstar, Nicol, Inc. v. Norton, 62 F Supp 354.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Re Standard Gas & Electric Company

File No. 70-1118, Release No. 6106
October 4, 1945

HEARING *on application of holding company for authority to sell its entire investment in wholly owned subsidiary under § 12(d) of the Holding Company Act and Rule U-44; authority denied.*

Consolidation, merger, and sale, § 45.1 — Sale of interest in subsidiary — Denial of approval — Competitive bidding defects.

A declaration, pursuant to § 12(d) of the Public Utility Holding Company Act, 15 USCA § 79*l*(d), and Rule U-44, regarding the proposed sale by a holding company of its entire investment in its wholly owned subsidiary was denied effectiveness where competitive conditions were not maintained by reason of the fact that, after the deadline for the making of solicited purchase offers, one of the bidders was allowed to revise his offer upward and the other offerors were not advised thereof.

APPEARANCES: A. Louis Flynn, by Helmar Hansen, for Standard Gas and Electric Company; George Rosier, for William Rosenblatt; Jesse J. Holland, of Levinson, Becker & Peebles, for W. H. Duff and Associates; Joseph A. Patrick, for Shepard, Scott & Co.; John W. Christensen and Edward V. Ahern, for the Public Utilities Division of the Commission.

By the COMMISSION: A declaration has been filed by Standard Gas and Electric Company (Standard), a registered holding company, pursuant to § 12(d) of the Public Utility Holding Company Act of 1935, 15 USCA § 79*l*(d) (the act), and Rule U-44 promulgated thereunder, regarding the proposed sale of its entire investment in its wholly owned subsidiary, Empresa de Servicios Publicos de los Estados Mexicanos, S. A. (Empresa), consisting of 50,000 shares of capital stock and an open-account indebtedness in the amount of $428,495.48, to William Rosenblatt, a nonaffiliate.

Objections to the proposed sale were raised by W. H. Duff and Shepard, Scott & Co. (Shepard Scott). Both were granted the right to and did participate in the hearings which were held after due notice. Duff withdrew from further participation prior to the completion of the hearings. Briefs were filed by Shepard Scott, Standard and Rosenblatt, all of whom also presented oral argument to us. Upon consideration of the record, we make the following findings:

The Companies Involved and the Proposed Sale

Standard, a subholding company of

Standard Power and Light Corporation, a registered holding company, has been ordered to dispose of its interests in Empresa under § 11 (b) (1) of the act, 15 USCA § 79k (b) (1).[1] The disposition of this interest is part of a program designed to bring Standard into compliance with the act.[2]

Empresa, a public utility company organized under the laws of the Republic of Mexico, serves certain communities in the states of Sonora and Sinaloa, Mexico. It is engaged primarily in the generation and distribution of electric energy, and also engages in the production and sale of ice and supplies water service.

Empresa has no long-term debt or stock other than that held by Standard. The following is a condensed balance sheet of Empresa as of May 31, 1945, stated in terms of United States currency:

Assets *	
Fixed Assets:	
Property and plant	$2,832,665
Intangibles	340,494
Total Fixed Assets	$3,173,159
Current Assets:	
Cash	28,235
Other current assets	212,082
Total Current Assets	$240,317
Other Assets	38,291
Deferred Charges:	
Expenses of revaluation of property	2,331
Other deferred charges	11,610
Total Deferred Charges	$13,941
Total Assets	$3,465,708
Liabilities *	
Long-term Debt:	
Indebtedness to Standard	$428,495
Capital Stock:	
Fully paid series, $100 par value 15,000 shares outstanding	1,500,000
Assessable series, $100 par value 35,000 shares outstanding (40% assessed and paid)	1,400,000
Total Capital Stock	$2,900,000
Current Liabilities	103,642
Deferred Liabilities and Credits	42,136
Contributions in aid of construction	4,369
Reserves:	
Retirement	390,616
Other	9,484
Surplus (Deficit)	(413,034)
Total Liabilities	$3,465,708

( ) Denotes red figures.

* The books of Empresa are stated in terms of Mexican currency. Standard has converted all amounts to terms of U. S. currency. Generally speaking, property and plant account is converted on the basis of exchange rates prevailing at the dates of acquisition or installation whereas other assets and liabilities except the retirement reserve, are converted at the current rate of exchange. The accumulated retirement reserve represents the appropriations for prior years at the current rates of exchange then prevailing.

The following is a statement of income of Empresa for the twelve months ended May 31, 1945:

Operating Revenues	$602,572
Operating Expenses and Taxes:	
Maintenance and repairs	65,074
Appropriation for retirement reserve	99,051
Other expenses and taxes (other than income taxes)	346,861
Provision for income taxes	11,162
Total operating expenses and taxes	$522,148
Net Operating Income	$80,424
Other Income	113
Gross Income	$80,537
Income Deductions:	
Interest charges to construction..	(9,261)
Foreign exchange loss	69
Total Income Deductions	($9,191)
Net Income	$89,728

( ) Denotes red figure.

Rosenblatt, who is acting as agent

[1] In Re Standard Power & Light Corp. (1941) 9 SEC 862.

[2] See Re Standard Gas & E. Co. (1944) Holding Company Act Releases Nos. 5430, 5470, 57 PUR(NS) 321, plan disapproved (1945) 58 PUR(NS) 278, 59 F Supp 274; reversed and remanded, — F2d —, Sept. 14, 1945.

on behalf of Credito General de Mexico, S. A., a Mexican financial corporation, has agreed to pay $640,000 in cash for the indebtedness and stock proposed to be sold.

The Requirement of Maintenance of Competitive Conditions

The proposed sale to Rosenblatt has developed out of a procedure adopted by Standard involving informal invitation of offers. After negotiating for the sale of its interest in Empresa over a period of several years, during which it received a number of offers that it deemed unacceptable, Standard on April 27, 1945, mailed letters to all groups who had evidenced an interest inviting them to submit written offers of purchase on or before June 1, 1945. In the invitation Standard reserved the right "to reject any and all offers" and stated that acceptance or refusal of any offer was "entirely in the discretion of Standard." In response to its invitations, Standard received the following offers on Friday, June 1, 1945; Rosenblatt, $630,000; Shepard Scott, $632,500; and Duff, alternative offers of $585,000 without inspection of Empresa's properties and $625,000 subject to withdrawal after such examination. The offer on behalf of Rosenblatt was submitted by an agent of Rosenblatt who received the figure offered by Rosenblatt over the telephone. On Monday, June 4, 1945, Rosenblatt advised Standard that he had authorized his agent to forward a bid of $650,000, and that the agent had erred in executing his instructions to offer $650,000 and had mistakenly inserted the $630,000 figure. He requested that Standard substitute the $650,000 offer for the one submitted on June 1st. Standard's officials discussed the propriety of thereupon informing other offerors of Rosenblatt's correction but decided not to do so.

Subsequent to the submission of the offers, Standard advised each of the bidders of the facts relating to a breakdown of one of Empresa's generating units and requested them to inform Standard by June 16, 1945, whether their offers were subject to adjustment as a result of these facts. Within the time designated, Rosenblatt modified his corrected offer of $650,000 so as to make it subject to the assumption by Standard of a maximum liability of $10,000 for expenses incurred in the repair of the unit, Shepard Scott confirmed its $632,500 offer, and Duff confirmed his offer of $625,000.

On June 21, 1945, Standard, having been informed of further generator difficulties, sent letters to all the offerors detailing the new facts and the costs that were to be incurred as a result. It is stated that the offers were to be submitted to Standard's board of directors on June 30, 1945, and requested the offerors to reply by June 27, 1945, as to what effect if any the changed circumstances would have upon their offers. Prior to June 27th, Shepard Scott and Duff reaffirmed their prior offers. Rosenblatt was on vacation when the letters of June 21, 1945, were sent. After Standard tried unsuccessfully to reach him on June 22nd for the purpose of settling the amount of Standard's liability under the condition contained in his modified offer, it communicated with Harry L. Borders, who had been acting in association with Rosenblatt on behalf of Credito General de Mexico,

S. A., with respect to the Empresa purchase, and arranged for a conference on June 28, 1945, the earliest date on which Borders could arrange to meet with Standard's officials. As a result of this conference, Rosenblatt's offer was made firm at $640,000. At a meeting of Standard's board of directors held on June 30, 1945, a report was made on the three offers which included the facts relating to the correction of Rosenblatt's original offer. The board accepted his $640,000 offer.

Shepard Scott has attacked the procedure which Standard has followed. It charges that Standard did not maintain competitive conditions within the meaning of the act, that it showed favoritism to Rosenblatt, modifying its announced competitive bidding procedure so as to enable Rosenblatt to submit a corrected offer higher than that submitted by Shepard Scott, and extending in favor of Rosenblatt the time fixed for other bidders to modify their bids. It contends that once having undertaken to invite competitive bids Standard was under an obligation to employ the formal competitive bidding procedure prescribed by our Rule U-50, which requires public invitation of sealed bids to be opened publicly at a specified time after which no further bids can be submitted. Shepard Scott asks us to deny effectiveness to the application.

The charges of favoritism made by Shepard Scott include the implication that Standard's officials actively conspired with Rosenblatt to insure that he would be the successful offeror. We find that there is no basis in the record to establish that Standard or its officials either deliberately undertook to favor Rosenblatt over other persons interested in acquiring Empresa or that there was any collusion between the Standard officials and Rosenblatt. The charges are in general predicated upon inferences sought to be drawn from unrelated or unmeaningful circumstances. For example, Shepard Scott places emphasis upon the fact that Rosenblatt's offer of June 1, 1945, was not submitted until late in that day after Leo T. Crowley, Standard's president, who was in Washington, had twice telephoned Standard's officials in Chicago to inquire as to the prices offered in the bids submitted during that day, and that Rosenblatt submitted his offer only after a series of telephone conferences with Borders who was also in Washington on that day. This is the substance of the facts regarding this claim and it is clear to us that these facts fall far short of persuading us that Crowley advised Borders what amount Rosenblatt should offer, as Shepard Scott's counsel would apparently have us believe.

Again, Shepard Scott points to a letter sent by Rosenblatt to Crowley on June 14, 1945, ten days after the correction in the June 1st offer had been made, in which he recited his continuous efforts over several years to acquire Empresa (in the course of which he had made offers of $500,000 and $600,000) and stated that in view of the time and expense incurred by him he felt he should receive special consideration and that his offer of $650,000 should be accepted in preference to any slightly higher bid by a newer bidder. This letter was presented at the meeting of Standard's board of directors on June 30, 1945, and,

rather than indicating collusion or favoritism, tends to show that Rosenblatt recognized that he was receiving only arm's-length treatment from Standard and wished to present all the considerations in his favor that might impel acceptance of his offer when it stood before Standard's board in open competition with other offers submitted.

A further circumstance adverted to as indicating that Rosenblatt was favored by Standard is that he has certain business associations with two of Standard's directors, Victor Emanuel and Hamilton Pell. All three persons have interests in Pell, Ltd., a company whose assets amount to about $60,000 and to which Rosenblatt provides office space. Emanuel's interest in Pell, Ltd., is small, and the interests of Rosenblatt and Pell amount to approximately one-eighth to one-tenth of the ownership. Also, Pell and Rosenblatt are directors of U. S. Vitamin Corporation, in which Rosenblatt has an investment of $5,600.[3] Pell attended the June 30th meeting of Standard's board of directors and voted in favor of accepting Rosenblatt's offer, but Emanuel was absent. We are of the opinion that the record does not establish that the limited community of business interest between Rosenblatt, Pell, and Emanuel operated to secure for Rosenblatt any unduly favorable treatment.[4]

Shepard Scott attacks Standard's procedure of advising all offerors of the generator breakdowns. This, it is implied, was designed to induce Shepard Scott and Duff to withdraw or reduce their offers after June 1st, so that they, like Rosenblatt, would be in the position of having altered their offers. Such an inference is entirely unwarranted from the evidence presented. The failures of the power units constituted important changes in the conditions in respect to which the offers were submitted, and the opportunity extended by Standard to have the offers clarified served the thoroughly legitimate purposes both of informing Standard whether the offerors would be willing to abide by their earlier offers or would seek to lower or withdraw them, and of giving the offerors a chance to modify their offers in light of the adverse developments.

Finally, the circumstances surrounding the correction of Rosenblatt's original offer of June 1, 1945, do not establish that Standard sought to prefer Rosenblatt over the other offerors. While the mistake asserted to have been made by Rosenblatt's agent was of a most unusual nature, we do not think it part of our duty here to pass on the question of Rosenblatt's good faith. It was up to Standard to determine whether the changed offer should be accepted as a correction of an error and there is nothing in the record to indicate that Standard did not act in good faith in concluding that a mistake had in fact been made.

It is clear to us that the charges of favoritism are without substance, and

[3] This investment plus the value of Rosenblatt's interest in Pell, Ltd., is less than 5 per cent of his assets.

[4] Shepard Scott also asserted that, as a member of a committee for preferred stockholders formed in connection with a reorganization of Standard in 1935, Rosenblatt had acquired special knowledge respecting Empresa which gave him an unfair advantage over the other offerors. However, there is nothing in the record to support the conclusion that Rosenblatt had any confidential information, or that, if he had any such knowledge, unfair use was being made of it.

we turn to a consideration of Shepard Scott's contention that a formal competitive bidding procedure should have been adopted and adhered to by Standard once it undertook to invite offers. An appraisal of this argument requires an examination of the nature of the standards established in the act and our rules thereunder.

Under § 12(d) and Rule U–44 the proposed sale cannot be consummated unless we enter an order permitting the declaration to become effective, and such order can be entered only if we find affirmatively that the statutory standards applicable to the sale have been complied with. Among such standards is that respecting the maintenance of competitive conditions. Declarant must show that such conditions have been maintained in connection with its proposed sale. This burden is not removed by the fact that since the total proceeds to Standard will not exceed $1,000,000, the proposed sale is exempt from the formal competitive bidding requirements that we have established under our rule U–50.[5]

The maintenance of competitive conditions requires that a vendor follow a selling procedure designed to afford to all persons interested a fair opportunity to make offers and to secure for the vendor the maximum price reasonably obtainable. We adopted Rule U–50 after a thorough study of the problems involved had led us to conclude that in sales of utility securities involving proceeds of over $1,000,000, the objectives of the act could best be obtained by a competitive bidding procedure involving publicly invited sealed bids to be opened and made public at a specified time. We considered that in such sales a less formal procedure would not be likely to assure equality of opportunity, orderly competition, and the avoidance of last-minute interposition of offers, and would, in cases involving significant stakes, not unlikely lead to complaints by unsuccessful bidders that the selling procedure was not pursued fairly.[6] In exempting sales involving less than $1,000,000 we considered that the elements of inequality, uncertainty, and delay likely to arise under informal procedures in larger transactions would not present themselves to the same degree and that a freer choice of procedure was properly left to sellers of small holdings. However, the freedom to choose a procedure other than the formal public invitation of bids required under Rule U–50 was not intended to and could not carry with it the power of a vendor to conduct sales without regard to the maintenance of competitive conditions. Whatever procedure the vendor chooses to employ in such sales must serve the basic objectives of the "competitive conditions" standard of the statute, which are to secure equality of opportunity and maximum price.

[5] Paragraph (a)(4) of Rule U–50 specifically excepts from the application of the Rule sales the total proceeds of which will not exceed $1,000,000.

[6] See statement of the Securities and Exchange Commission upon the promulgation, under the Public Utility Holding Company Act of 1935, of Rule U–50, requiring competitive bidding for securities of registered public utility holding companies and their subsidiaries, Holding Company Act Release No. 2676, April 7, 1941; Report of the Public Utilities Division of the Securities and Exchange Commission, "The Problem of Maintaining Arm's-length Bargaining and Competitive Conditions in the Sale and Distribution of Securities of Registered Public Utility Holding Companies and their Subsidiaries," pp. 38–40 (1940).

Therefore, while Standard was under no obligation to follow the formal competitive bidding procedure prescribed by Rule U-50 and the contention of Shepard Scott is not sound in this respect, our inquiry still must be whether the record establishes that throughout the events relating to the invitation, submission, alteration, and modification of the offers to buy the Empresa investment, interested persons were in fact given equal opportunity to make their offers apart from the question of good faith involved in the procedure.

Standard's invitation recited that it was being sent to all persons who had evidenced an interest in acquiring the investment. It accordingly carried the clear implication that identical procedural rules were to be applied with respect to all offerors and that written offers sent in by June 1st were to compete with each other as submitted on that date. In permitting the correction of Rosenblatt's offer after June 1st, Standard departed from the procedure which it itself had undertaken to follow. Accepting the good faith of Standard in permitting the increase of Rosenblatt's original offer on the ground that a mistake had been made, the other offerors were nevertheless entitled to be advised that the rules under which they had been proceeding had been modified. Standard's officials did not notify the other offerors of the alteration. In fact Standard refused to answer an inquiry made by Shepard Scott as to the truth of a rumor that one of the offerors had been allowed to change his bid after June 1st.[7]

The procedure followed thus did not achieve equality of opportunity consistent with the procedure specified by Standard itself. Had the alleged mistake and requested correction been made known to the other offerors and extension of time allowed for further offers, equality of opportunity among offerors would have been afforded.

The series of mistakes, alterations, changes in conditions, modifications, and extensions so confused the procedure initiated by Standard (in an apparent desire to produce an orderly selection of the highest offer) that we cannot conclude that competitive conditions were maintained. From any point of view it seems clear to us that the past transactions should be erased and an orderly procedure of sale be established.

An order will issue denying effectiveness to the declaration.[8]

[7] Though Standard's meeting with Borders after the June 27th time limit had no actual effect on the various offers in view of their amounts and terms, it constituted a second departure by Standard from a procedure which it told offerors would be pursued as to all of them.

[8] Shepard Scott has asked that we enter an order the effect of which would be to direct Standard to negotiate with it alone and accept some price in excess of $640,000. We see no more justification for placing Shepard Scott in a favored position in this fashion than Shepard Scott saw in the alleged favoritism to Rosenblatt.

UNITED STATES DISTRICT COURT, D. DELAWARE

Re North Continent Utilities Corporation

No. 355
61 F Supp 419
July 7, 1945

MOTION *to amend order approving plan for holding company liquidation so as to reserve Commission jurisdiction over disposition of assets; motion granted. See also (1944) 54 PUR(NS) 401, 54 F Supp 527.*

Corporations, § 15.2 — Liquidation of holding company — Amendment of plan — Reservation of Commission jurisdiction.

1. A plan for liquidation of a holding company providing for satisfaction of the company's debentures by pro rata payments of cash as assets were sold and reserving exclusive jurisdiction over the company and its assets to the court was amended so as to affirm the Securities and Exchange Commission's reservation of jurisdiction in its order approving the plan in respect of any steps taken to effectuate disposition of the company's assets, p. 328.

Corporations, § 15.2 — Holding company liquidation — Disposition of assets — Necessity of court approval.

2. Court approval of the disposition of a holding company's assets pursuant to an approved liquidation plan is not made necessary by the fact that the court has retained exclusive jurisdiction of the holding company's assets, particularly where the Securities and Exchange Commission has reserved jurisdiction over such disposition of assets, p. 329.

APPEARANCES: David K. Kadane, Special Counsel, and Arthur Goldman, both of Philadelphia, Pa., for Securities and Exchange Commission; Sydney K. Schiff (of Pam, Hurd & Reichmann), of Chicago, Ill., for North Continent Utilities Corporation; Helmer Hansen, of Chicago, Ill., for Preferred Stockholders' Committee.

LEAHY, D.J.:

[1] The court approved a § 11(e) plan of North Continent Utilities Corporation under the Public Utility Holding Company Act of 1935, 15 USCA §§ 79 et seq. See (1944) 54 PUR(NS) 401, 54 F Supp 527. The plan called for satisfaction of the company's debentures by pro-rata payments of cash as assets were sold from time to time. The March 17, 1944, order of approval provided, among other things, that the court take exclusive jurisdiction over the company and its assets. Paragraph 2 of the order specifically provides: "North Continent Utilities Corporation shall retain possession of its assets and continue the operation of its business through its officers, directors, and em-

ployees and in accordance with its articles of incorporation and its bylaws, except as otherwise provided by this order or any subsequent order herein." The SEC now moves to amend the above paragraph by adding an additional sentence which will read: "North Continent Utilities Corporation until further order of this court may enter into transactions not inconsistent with the plan, including sales of its assets or assets of its subsidiaries, upon the filing of appropriate applications and declarations with, and the entry of appropriate orders by the Securities and Exchange Commission, in conformity with the Public Utility Holding Company Act of 1935 and the rules, regulations, and orders promulgated and issued thereunder."

The proposed amendment should be allowed. The plan contemplates complete liquidation of North Continent. Since the order of approval was entered, it has been and now is disposing of its assets by selling portfolio securities and physical assets of its subsidiary companies engaged in the gas and electric utility business and in the ice and mining nonutility businesses. The proposed amendment, in short, simply affirms the SEC's reservation of jurisdiction in its order approving the plan under date of November 16, 1943, i. e., its reserved jurisdiction in respect of "any steps taken to effectuate disposition of North Continent's assets." As assets are transmuted into cash, § 12(d) of the act, 15 USCA § 79*l*(d) becomes operative. That section provides: "It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder."

[2] The question raised by the motion to amend the order of March 17, 1944, is whether approval of this court must also be obtained in respect of each sale of assets, because this court has retained exclusive jurisdiction of those assets. We do not think that such court approval is necessary.

Homewood v. Standard Power & Light Corp. (1944) 55 PUR(NS) 37, 55 F Supp 100, 103, suggested the necessity to integrate the Public Utility Holding Company Act into the judicial process in view of the SEC's statutory duties. The present matter is another illustration of the same thought. Section 12(d) was designed to protect investors against any sacrifice of their equity in the sale of their assets.[1] SEC's Rule U–44 was pro-

[1] The Congressional intent is clear:
"Subsection (d) [of § 12] prohibits registered holding companies from disposing of their assets and securities in contravention of the rules and regulations of the Commission regarding costs, accounts, competitive bidding, fees, disclosure of interest, and similar matters so that both the investor and the underlying properties may be protected in the reorganization of the systems. This section is essential to prevent piecemeal evasion of the reorganization safeguards set up in § 11 and to prevent the sacrifice of the investors'

mulgated to carry § 12(d) into effect.[2] Form U–1 is a declaration which must be filed in connection with the sale of any asset. It provides for minute exposition; for example, there must be disclosure as to the nature of the assets involved, all relevant financial data, terms, and conditions of sale, etc. SEC's staff, consisting of attorneys, analysts, accountants, and engineers, then goes into action. Their expert competence is shown by the fact that from December 1, 1935, to June 30, 1944, 692 orders have been entered respecting sales of utility assets. In the fiscal year ending June 30, 1944, 272 of such orders have been entered. No Federal court in our system has had such specialized experience.

Moreover, practical considerations must be examined. If sales must be approved by both SEC and court, the apparent difficulties inherent in a single situation show the impracticability of such duality of administrative and judicial approval. To take the instance where portfolio securities are sold for resale by the buyer, the usual form of underwriting agreement provides for such resale within not more than forty-eight or seventy-two hours. SEC is adequately equipped, with its trial examiners, to conduct hearings on the appropriateness of price and underwriting spread, so that the Commission may enter its order within the stated period. If in addition court approval of such underwriting were always required, another hearing would likewise be required, after notice given, and it is doubtful if the usual form of underwriting agreement could be utilized.

Underwriters' risk increases commensurately with the period between the signing of the agreement and the time of resale of the securities to the public. The time factor defines the size of the spread. Neither the SEC nor the court would approve a sale by an unusual underwriting which would substantially diminish the return the company would ultimately receive for the sale of its assets.

The ruling here simply approves what the court believes to be a pure piece of administrative business—disposition of a subject company's assets as an inherent part of a plan of liquidation after notice and opportunity for hearing and critical examination by the SEC and its staff. If a party is of belief that the sales price of a particular asset is grossly inadequate because of an arbitrary fixation of values, there has been no suggestion that such party may be deprived of a judicial review, either in the district court of enforcement or to a circuit court of appeals under § 24(a), 15 USCA § 79x(a).[3] But, such observations are by way of obvious dicta, for no one has, as yet, raised the point. The precise problem attempted to be met here is the simple separation of the functions of court and SEC for

equity." S. Rep. 621, 74th Cong. 1st Sess. p. 35.

[2] There is one class of sales which does not come before the Commission: "sales of securities or utility assets to a Federal or state government or to any subdivision, agency, or instrumentality thereof" have been exempted by the Commission in Rule U–44 (b) (3). The basis for such rule, the avoidance of supervision of the activities of government instrumentalities, is founded on the same principles of comity which we think should be persuasive with this court.

[3] Whether the district court of enforcement is the exclusive tribunal, once a plan has been submitted for approval, see Okin v. Securities and Exchange Commission (1944) 57 PUR(NS) 395, 145 F2d 206, certiorari granted (1945) — US —, 89 L ed —, 65 S Ct 1569.

the purpose of carrying out a plan that has already been approved by both SEC and court.

The motion for an amendatory order is granted.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

North Penn Gas Company et al.

Complaint Docket Nos. 14025, 14026
July 24, 1945

INVESTIGATION *of reasonableness of proposed natural gas rates; proposed rates approved.*

Valuation, § 79 — Reproduction cost determination — Use of average prices.

1. Testimony that the original cost of drilling shallow gas wells would be increased if the average prices during the past five years had been used does not furnish satisfactory data for consideration of reproduction cost for rate-making purposes, p. 333.

Valuation, § 202 — Property not used — Gas plant.

2. The cost of gas manufacturing equipment which has not been used for approximately fourteen years and is not now in operation, and which could be placed in operating condition only at great expense, should be excluded from the rate base of a natural gas company, p. 333.

Valuation, § 168 — Original cost determination — Exclusion of expensed property.

3. Expensed property (property the cost of which has been treated as an operating expense and recouped from consumers) should be excluded from the original cost of natural gas properties for rate-making purposes, p. 333.

Valuation, § 96 — Accrued depreciation — Effect of unused property.

4. Depreciation applicable to the properties of a gas company not now used or useful and excluded from the company's original and book cost for rate-making purposes should be eliminated from the depreciation allowance for rate-making purposes, p. 334.

Return, § 101 — Natural gas company.

5. A return of 6½ per cent was deemed reasonable for a natural gas company because of the greater risk in natural gas projects, p. 336.

Depreciation, § 16 — Annual allowance — Unused property.

6. Annual depreciation on a portion of a manufactured gas plant not used by a natural gas company should be excluded where the nonused manufactured gas property was excluded from original and book cost for rate-making purposes, p. 337.

Expenses, § 35 — Capital amortization — Loss on property not used.

7. Amortization of the loss on manufactured gas properties no longer used and useful by a natural gas company should be allowed for natural gas rate-making purposes, p. 337.

Depreciation, § 16 — Expensed property.

8. Depletion on the undepleted balance of expensed property which has been excluded from cost of natural gas properties should be disallowed for rate-making purposes, p. 337.

Expenses, § 109 — Taxes on interest payments.

9. Taxes assumed on interest payments should be excluded from operating expenses for rate-making purposes, since interest payments are chargeable to income deduction and the taxes thereon should follow, p. 337.

By the COMMISSION: Allegany Gas Company has been conducting natural gas operations in the counties of Potter and McKean, Pennsylvania, since 1898. Until 1927 natural gas was obtained by Allegany Gas Company from what are commonly known as shallow wells. During the years immediately preceding 1927, Allegany Gas Company experienced a shortage of gas and this situation became acute during that year. In order to supply its customers, Allegany Gas Company organized North Penn Gas Company for the purpose of manufacturing gas. The latter company acquired a newly constructed gas plant at Roulette, Pennsylvania. At the same time Allegany Gas Company sold to North Penn Gas Company certain transmission lines and all of its distribution lines in Pennsylvania. Allegany Gas Company is now a wholly owned subsidiary of North Penn Gas Company. The two companies have the same office, have substantially identical officers, and the facilities of the two companies are connected at many points.

As the production in the local fields diminished, the companies found it necessary to secure emergency gas and this gas was purchased from New York State Natural Gas Corporation during 1943 and until November, 1944, at 42 cents per thousand cubic feet, a price considerably in excess of the companies' own production costs. On February 23, 1943, the two companies filed tariff supplements imposing charges whereby they attempted to recoup the increase in cost for gas purchased from New York State Natural Gas Corporation. Those rates were not protested by any consumers or the Office of Price Administration and the tariffs became effective. On November 1, 1944, North Penn and Allegany Gas companies began to receive gas from New York State Natural Gas Corporation at a price of 37½ cents per thousand cubic feet pursuant to an agreement entered into between the parties which will continue in effect until 1964. On September 30, 1944, North Penn Gas Company and its affiliate, Allegany Gas Company, filed Tariff Pa. P.U.C. No. 12 and Tariff Pa. P.U.C. No. 9 to become effective December 1, 1944. These tariffs provide a single uniform block rate with net charges applicable to customers as follows:

First 3 M cu. ft. per month at $0.80 per M cu. ft.
Next 297 M cu. ft. per month at $0.55 per M cu. ft.
Next 40,000 M cu. ft. per month at $0.42 per M cu. ft.
All over 40,300 M cu. ft. per month at $0.40 per M cu. ft.

On November 27, 1944, the Commission suspended the proposed tariffs and instituted an investigation upon its own motion for the purpose of determining the reasonableness of the proposed rates and charges. On motion by the companies, the Commission directed that the two cases be consolidated. The Commission also permitted the Office of Price Administration to intervene in the proceedings.

In the present proceeding, the Commission has conducted a thorough inquiry into the matters before it including operating experience and the historical background of the respondents. Hearings have been concluded, respondents and intervener have filed briefs, and the matter is now before us for disposition.

The basic principles of our rate case deliberations have been enunciated in several recent decisions, notably Public Utility Commission v. Peoples Nat. Gas Co. (1942) 23 Pa PUC 556, 43 PUR(NS) 82 (1942) 24 Pa PUC —, 47 PUR(NS) 385; and Public Utility Commission v. Manufacturers Light & Heat Co. (1943) 24 Pa PUC —. In view of the conclusions we have reached in the present record, the statements of principle contained in the above decisions need not be repeated. It is sufficient to state that our consideration of the record in this case has been guided by their directives.

We will discuss the material elements under the following headings:

1. Reproduction Cost.
2. Original Cost.
3. Book Cost.
4. Depreciation and Depletion.
5. Working Capital.
6. Rate of Return.
7. Operating Revenues and Expenses.
   (a) Annual Depreciation.
   (b) Taxes.
8. Conclusions.

1. *Reproduction Cost.*

[1] No reproduction cost study was presented in these proceedings. However, respondents' witness testified that the original cost of drilling shallow wells which amounted to $1,284,327 would be increased to $2,117,760 if the average prices during the period from 1939 to 1944, inclusive, had been used. Such testimony does not furnish satisfactory data for consideration of reproduction cost.

2. *Original Cost.*

[2, 3] Exhibit 3 shows the undepreciated original cost of respondents' fixed capital to be $9,749,411 at December 31, 1944.

Included in the original cost of fixed capital as shown above is an amount of $387,173 which represents that portion of the Roulette plant not presently used as set forth in Exhibit II. Also, there is included an amount of $210,000 representing well construction costs expensed during the period from 1909 to 1919, inclusive, and restated in 1927.

Respondents' witness admitted that certain equipment in the Roulette plant has not been used since September, 1930. This equipment consists of a relief holder, water gas sets, coal, coke, and ash equipment, purification

equipment, other production equipment and pumping station equipment as shown in Exhibit 11. However, respondents argue in their brief that the gas manufacturing equipment should be included in the rate base. This position is based upon the testimony of respondents' witnesses, Isherwood and Lockwood. Both of these witnesses testified that there might be a prospective use for the manufactured gas plant. The record does not support this conclusion. Notwithstanding the fact that the respondents have faced increasing difficulties in securing a sufficient gas supply, the manufacturing gas plant has not been used for approximately fourteen years and is not now in operating condition. Lockwood, the respondents' engineer, estimated it would require the expenditure of approximately $15,000 to place the plant in operating condition. On December 31, 1943, a contract was executed by respondents and the New York State Natural Gas Corporation which assures the respondents gas deliveries of at least 4,250 thousand cubic feet daily until November, 1964. For these reasons we will exclude $387,173 from the original cost as representing property not used or useful.

With respect to the item of expensed property amounting to $210,000 it may be said that the respondents' claim for inclusion of this item in the rate base is simply a plea for permission to charge their customers for a return on property which the customers have previously paid for dollar for dollar through operating expenses in the installation years. Since respondents elected to treat well-drilling cost and the related expenses prior to 1920 as operating expense, it is not proper to now restate such items as fixed capital to be included in the rate base. Therefore, following the principle enunciated by the Commission in its orders in the Peoples Natural Gas Company and the Manufacturers Light and Heat Company matters, *supra*, we exclude this item from the original cost.

With these adjustments, the original cost of used and useful fixed capital at December 31, 1944, is $9,152,238.

3. *Book Cost.*

Respondents did not present data showing the book cost of the fixed capital at December 31, 1944. However, they adjusted the books on the basis of their determination of the original cost of fixed capital as of that date as shown by the annual reports made part of the record by reference. Therefore, the book cost as adjusted amounted to $9,152,238 as of December 31, 1944.

4. *Depreciation and Depletion.*

[4] The reserve for depreciation and depletion at December 31, 1944, as shown by the books of respondents amounted to $4,234,347 or 46.27 per cent of the adjusted book cost at that date. The actual depreciation computed by respondents' engineer by the age-life method was $5,033,934 or 50.76 per cent of the original cost. Those amounts include depreciation applicable to the portion of the Roulette plant not now used or useful, and disallowed in our discussion of original and book cost. Therefore, it is necessary to eliminate the depreciation related to the item disallowed. After making these adjustments and apply-

ing the adjusted depreciation to the original and book cost, the depreciated original cost and book cost would be $4,486,802 and $5,207,543, respectively, as follows:

	Original Cost	Book Cost
Fixed Capital at December 31, 1944	$9,152,238	$9,152,238
Depreciation	5,033,934	4,234,347
Less:		
Depreciation—Property not used or useful	236,618	167,484
Depreciation—Expensed Property	131,880	122,168
Adjusted Depreciation	$4,665,436	$3,944,695
Depreciated Fixed Capital	$4,486,802	$5,207,543

5. *Working Capital.*

Respondents estimated that the working capital requirements would be $451,613.92 which includes storage gas requirements amounting to $247,000.

We have computed working capital requirements to be $327,514 as follows:

Total Operating Expenses		$1,641,844
Deducting for items not payable within 45 days:		
Natural Gas Purchases	$847,336	
Duplicate Charges—Cr.	(42,403)	
Storage Gas—Net	—	
Exchange Gas—Net	1,332	
Miscellaneous Income Deductions	3,251	
Depreciation and Depletion	180,084	
Amortization—Manufactured Gas Plant	13,263	
Taxes, Other than Income	29,233	
Taxes, State and Federal Income	40,807	
Nonproduction Well Drilling	26,704	
Abandoned Leases	9,143	1,108,750
Remainder		$533,094
Cash Requirements:		
45 days or 1/8 of $533,094		$66,637
Prepayments		29,784
Total Cash Requirements		$96,421
Materials and Supplies		$103,093
Storage Gas		$128,000
Estimated Working Capital		$327,514

The principal difference in the estimates of working capital is the amount computed for storage gas. Respondents estimated this item to be $247,000, but we have determined that data available in the record indicate the amount should not exceed $128,000. The latter amount is based upon the quantity of gas that will be available for storage during the months of April to November, inclusive, and which will be purchased from the New York State Natural Gas Corporation, less the quantity required to replace the gas which will not be obtainable from the Cunningham wells after December 31, 1945. During the eight months referred to above the quantity of gas available for storage would be 686,253 thousand cubic feet and the weighted average quantity of gas in storage during the

year would be 340,792 thousand cubic feet. At 37½ cents per thousand cubic feet this would amount to approximately $128,000. With this adjustment the working capital would be $327,514.

6. *Rate of Return.*

[5] We are of the opinion that 6½ per cent is a fair rate of return for respondents considering the character of their property, territory, and operations. We are confirmed in this conclusion by the general acceptance by courts and Commissions of the 6½ per cent rate as properly representing a profit to which natural gas companies are entitled. A 6 per cent return has been adopted by us in rate cases involving other than natural gas utilities, and our application of 6½ per cent in natural gas cases reflects the rather general belief that a somewhat higher return must be available to compensate for the greater risk in the natural gas projects.

7. *Operating Revenues and Expenses.*

A statement of the actual operating revenues and expenses for the year ended December 31, 1944, and an estimate of future revenues and expenses, giving effect to the proposed rates and the changed operating conditions resulting from the purchase of gas from the New York State Natural Gas Corporation, are shown as follows:

	Actual 1944	Estimated for Changed Conditions
Total Operating Revenues	$1,870,137	$1,892,538
Operating Expenses		
Gas Produced	$171,982	$171,982
Local Gas Purchases	326,868	259,729
New York State Natural Gas Corporation Purchases	391,426	587,607
Gas Purchase Expense	55,449	42,649
Other Production Expenses	15,208	1,332
Transmission Expense	125,255	97,255
Depreciation and Depletion	207,490	180,084
Amortization Adjustment	6,786	
Amortization—Manufacturing Gas Plant		13,263
Taxes Assessed on Interest	7,024	
State and Federal Income Taxes	49,020	40,807
Other Operating Expense	247,136	247,136
Total Operating Expenses	$1,603,644	$1,641,844
Net Operating Income	$266,493	$250,694

The actual net operating income for the year ended December 31, 1944, was $266,493 and the estimated net income under the proposed rates and new operating conditions is $250,694. Although the estimate shows that the gross revenue will be increased $22,401, certain increases in operating expenses result in a decrease of $15,799 in the estimated net-operating income.

The principal increase in operating expenses will result from the use of gas purchased from the New York State Natural Gas Corporation under a contract dated December 31, 1943, to substitute for gas now being produced locally at the Cunningham wells. During the year 1944 the production from the Cunningham wells amounted to 553,815 thousand cubic feet at a total cost of $67,139 or approximately 12 cents per thousand

cubic feet. The Cunningham wells will be abandoned during 1945 and the substitute gas purchased from the New York State Natural Gas Corporation will cost $207,680 or 37½ cents per thousand cubic feet.

The purchase of 553,815 thousand cubic feet of gas from the New York State Gas Corporation instead of from local producers, less minor adjustments, results in an increased cost of gas amounting to $129,042.

The gas purchased expense in the estimate was reduced $12,800 because of the expected abandonment of the Cunningham wells in 1945 and the production expense was reduced because of a change in the method of handling storage and compensation gas.

With respect to transmission expense, respondents' witnesses testified that this item would be decreased $28,000 because of changed operating conditions beginning with 1946. We have reduced transmission cost by that amount.

7(a). Annual Depreciation.

[6–8] The actual charge for depreciation and depletion for the year ended December 31, 1944, amounted to $207,490. Respondents' witness computed the annual depreciation and depletion on original cost by the age-life method to be $198,413. This amount includes annual depreciation amounting to $13,263 on a portion of the manufacturing gas plant at Roulette not used and annual depletion amounting to $5,066 on expensed property. Since we have excluded the nonused and useful property from original cost and book cost, the item of $13,263 should also be excluded from the annual depreciation. However, we have allowed the charge of $13,263 as an amortization of the loss on the property not used and useful which is discussed below. The item of $5,066 represents depletion on the undepleted balance of expensed property which we have excluded from the original cost and book cost. Therefore, the annual depreciation should also be excluded. After making these adjustments the estimated annual depreciation would be $180,084.

The item of amortization adjustment amounting to $6,786 charged to expense in 1944 represents acquisition adjustments which are nonrecurring and therefore is not included in the estimate.

We have excluded from the original cost and book cost an item of $387,-173 representing certain parts of the manufacturing gas plant at Roulette no longer being used. Respondents have determined that the actual accrued depreciation thereon at December 31, 1944, was $236,618. We have estimated that the amount of depreciation reserve provided for the item on respondents' books at that date was $167,484 and that the undepreciated not used and useful property amounts to $219,689. Respondents claim that the undepreciated property not used represents a loss not recouped by them and that they should be allowed an annual depreciation amounting to $13,263 for the purpose of amortizing this loss. We think the respondents may properly recoup the loss through operating expenses, and we have therefore included $13,263 for amortization of the property not used or useful.

7(b). Taxes.

[9] There is included in the actual

operating expenses for the year 1944 an item of $7,024 for taxes assumed on interest payments. Interest payments are chargeable to income deduction and the taxes thereon should follow. For this reason we have excluded this item from operating expenses.

The state and Federal income taxes in 1944 amounted to $49,020 and we have determined that the taxes under the proposed rates and new operating conditions would be $40,807 which we have allowed. Respondents' witness testified that the income taxes could be reduced approximately $27,900 if tax returns could be filed on a consolidated basis. But in order to do this the Pennsylvania Gas and Electric Corporation (parent company) would be required to own 95 per cent of the outstanding voting stock of the North Penn Gas Company. The outstanding stock amounts to 113,160 shares consisting of 100,000 shares of common and 13,160 shares of preferred. The parent company owns 99,990 shares of the common and 6,500 shares of the preferred or 94.1 per cent. The preferred stock has voting rights at the present time because the North Penn Gas Company has defaulted in the payment of dividends to the extent of $230,300 at December 31, 1944. However, even if the respondents were able to reduce the income taxes by $27,900 it would not result in an excessive return.

8. *Conclusions.*

After making the adjustments referred to above, the estimated net operating income would be $250,694 as shown above or a return of 6½ per cent on a rate base of $3,856,800. The depreciated original cost plus working capital would amount to $4,814,316 and it thus appears that the proposed rates will not result in excess earnings.

Commissioner Thorne concurred in the result only.

ALABAMA PUBLIC SERVICE COMMISSION

Re Alabama Power Company

Docket No. 9437
August 9, 1945

PETITION *for direction of Commission in disposal of accounting items; order entered prescribing accounting entries.*

Accounting, § 32 — Amortization of plant acquisition adjustments.

An amount remaining after adjustments in Account 100.5, Electric Plant Acquisition Adjustments, was permitted to be disposed of by monthly charges to Account 505, Amortization of Electric Plant Acquisition Adjustments, subject to the express reservation that such treatment would be for accounting purposes only and should not be construed as decisive of, or presumptive of, the treatment to be accorded these charges in rate or other proceedings.

APPEARANCES: Martin, Turner & McWhorter, Birmingham, for petitioners.

By the COMMISSION: The petition in this cause was filed with the Commission on July 26, 1945, and a public hearing thereon was held by the Commission at its offices in Montgomery, Alabama, on August 3, 1945.

The petition sets forth the company's proposal to record petitioner's reclassification of plant account as of January 1, 1937, as filed with the Commission November 26, 1940, to make certain accounting adjustments to such reclassification as filed and seeks an order of the Commission directing disposal of amounts to be recorded in Account 107 Plant Adjustments and amounts to be recorded in Account 100.5 Electric Plant Acquisition Adjustments, all pursuant to the requirements of the Uniform System of Accounts for Electric Utilities as prescribed by this Commission.

The petitioner filed with this Commission on November 26, 1940, petitioner's reclassification and original cost studies of electric plant account pursuant to Electric Plant Account Instruction 2-D of the Uniform System of Accounts. Such reclassification and original cost studies were concurrently filed with the Federal Power Commission. After a field investigation by representatives of the Federal Power Commission, the results of which were made available to this Commission, conferences were held in the offices of the Federal Power Commission in December, 1944, and April, 1945, between representatives of the petitioner and members of the staff of the Federal Power Commission (members of the staff of this Commission being present) who discussed the reclassification of the plant account of petitioner and the adjustments relating thereto proposed by the examiners of the Federal Power Commission. During the progress of this

discussion, representatives of the company discussed various phases of the problems involved in conferences with this Commission and members of its staff.

As a result of these discussions, petitioner has made identical proposals to the Federal Power Commission and this Commission relating to the recording of the company's reclassification of plant account and the disposal of the amounts to be recorded in Account 107 Plant Adjustments and amounts to be recorded in Account 100.5 Electric Plant Acquisition Adjustments.

The proposal of the petition is that it will:

(A) Record the company's reclassification of plant account as at January 1, 1937, as filed with this Commission on November 26, 1940.

(B) Make adjustments of plant items proposed for adjustment included in Exhibit 3 to its petition in this proceeding to the accounts indicated therein, as follows:

		Debit	Credit
100.1	Electric Plant in Service		$7,392,502.96
100.4	Electric Plant Held for Future Use	$166,485.84	
100.5	Electric Plant Acquisition Adjustments		21,471,270.80
108	Railway Plant	485,395.11	
107	Plant Adjustments	28,201,201.95	
110	Other Physical Property	16,253.19	
142	Preliminary Survey and Investigation		5,562.33
		$28,869,336.09	$28,869,336.09

(C) Dispose of the balance of $9,886,575.06 as shown in Exhibit 1 to the petition remaining in Account 107, Plant Adjustments, as follows:

250—	Reserve for Depreciation of Electric Plant (Items detailed on Schedule 1 attached to the petition and made a part thereof)	$2,858,952.44
250—	Reserve for depreciation of Electric Plant (Excess of Original Cost over Cost of Acquisition of Gorgas Unit)	(1,275,544.10)
250—	Reserve for Depreciation of Electric Plant (Reserve considered to be applicable to properties sold to TVA and retired in 1942 and unrecorded retirements of plant retired in 1942, by charge to Capital Surplus. The effect of this entry is to charge Reserve for Depreciation and restore to Capital Surplus the amount charged in 1942)	863,783.23
140—	Unamortized Debt Discount and Expense	692,210.75
151—	Capital Stock Expense	1,628,892.96
270—	Capital Surplus	683,384.62
258—	Special Reserve for Adjustment in Plant Account	2,921,552.00(a)
258—	Special Reserve for Martin Dam and Jordan Dam Licensed Projects	400,000.00(b)
271—	Earned Surplus	1,113,343.16
	Total	$9,886,575.06

(a) Including estimated additional credit of $1,200,000 on account of the amortization of Emergency Facilities in the year 1945.

(b) Estimate of Licensed Project Costs that were disallowed by Federal Power Commission staff as actual legitimate original cost of project property under license which should be reinstated in conformity with the ruling of U. S. Court of Appeals for the Fifth Circuit. The company agrees that any deficit in such special reserves, after the entries have been made to carry out the final orders of the Federal Power Commission, will be charged to Account 271—Earned Surplus.

Petitioner further proposes that it is willing to accept an order from this Commission requiring the amortization of the balance of $8,777,898.84 which will remain in Account 100.5 after making the proposed adjust-

ments, such amortization to be accomplished by making monthly charges of $48,766.11 to income, with concurrent credit of like amount to Account 100.5, commencing as of August 1, 1945, and continuing for fifteen years with the understanding that such amount may be accelerated by the company over a shorter period of time.

At the hearing on August 3, 1945, the company offered testimony and documentary evidence in support of its petition.

The company maintained at the hearing that under the provisions of the System of Accounts prescribed by this Commission the proper income account for recording the monthly charges for the amortization of Account 100.5 is Account 505 "Amortization of Electric Plant Acquisition Adjustments," an account which provides for operating revenue deductions. In support of its position, the company presented evidence that the amounts reflected in Account 100.5 represented actual cash or cash equivalent paid in many arm's-length transactions throughout the history of the company for properties acquired as operating units or systems; that these acquisitions were made in the course of and as a necessary part of its program to provide an integrated electric system and that as a result of such acquisition and integration it has been able to replace small isolated systems throughout the state served by small and inefficient generating plants with a modern integrated electric system consisting of large centrally located hydroelectric and steam generating plants, an interconnected system of transmission lines and distributing systems, all of the most modern type, to the great improvement of the quality of its service to its customers. The company also presented detailed evidence as to expansion of the company's service year by year and the decline in its rates for service of all classes. The company also presented accounting opinion that under such circumstances it is proper to treat amounts devoted to amortization of Account 100.5 as operating expense.

This Commission does not consider that it is necessary to decide in this proceeding the question whether current charges to revenue for amortization of amounts recorded in Account 100.5 should be considered for regulatory purposes as in the nature of an operating revenue deduction or as an income deduction. Inasmuch as the conditions or terms are not clearly prescribed under which income deductions Account 537 should be used instead of operating revenue deductions Account 505, and inasmuch as either of such accounts may by its terms be used to reflect the substance of the transaction as a segregation of revenue for the amortization or retirement of invested capital recorded in Account 100.5, our order will permit that monthly charges for such amortization may be recorded by the company in Account 505 without now deciding whether such charges are under the facts of this case in the nature of operating revenue deductions or income deductions. This permission to make such charges to Account 505 is made with the express reservation that such treatment is for accounting purposes only and such treatment shall not be construed as decisive of or presumptive of the treatment to be accorded

these charges in rate or other proceedings. Furthermore, our order in this case shall not be construed as precluding this Commission in rate or other proceedings from making whatever adjustments it may deem appropriate in the future with respect to the provision for reserves resulting from tax savings by amortization of war facilities, or the provision for reserves for depreciation.

ORDER

The premises considered, it is *ordered* by the Commission:

1. That petitioner dispose of the balance of $9,886,575.06 to remain after adjustment in Account 107, Plant Adjustments, and may do so as set out in detail in the report accompanying this order.

2. That petitioner dispose of the balance to remain after adjustment in Account 100.5, Electric Plant Acquisition Adjustments, in the amount of $8,777,898.84 and may do so by making monthly charges of $48,766.11 to Account 505, Amortization of Electric Plant Acquisition Adjustments, subject to the reservation stated in the report accompanying this order, with concurrent credits of the same amount to Account 100.5 commencing as of August 1, 1945, and continuing for fifteen years. Provided, however, that such amortization may, at the election of the company be accelerated from time to time upon approval of the Commission.

3. Nothing in this order shall be construed as precluding this Commission from making whatever adjustments it may deem appropriate in the future with respect to (a) the provision for reserves resulting from tax savings by amortization of war facilities and (b) the provision for reserves for depreciation in rate or other proceedings.

4. Jurisdiction hereof is retained by the Commission for the purpose of making such other and further orders herein as may be found reasonable, necessary and proper.

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA

First Iowa Hydro-Electric Cooperative

v.

Federal Power Commission (State of Iowa, Intervener)

No. 8752
— US App DC —, 151 F2d 20
August 13, 1945

REVIEW *of order of Federal Power Commission dismissing application for license, under Federal Power Act, to authorize construction and operation of power development; affirmed. For Commission decision, see (1944) 52 PUR (NS) 82.*

Water, § 21 — Diversion from stream — Necessity of state permit.

1. Sections 7767 and 7771 of Chap 363 of the Iowa Code (1939), prohibiting construction of dams in navigable streams or in other streams for manufacturing or power purposes and prohibiting the taking of water from such streams for industrial purposes unless a permit has been granted by the executive council, and providing the basis on which a permit should be granted, are not to be construed as prohibiting diversion of water only for industrial purposes and not prohibiting diversion for power purposes, p. 346.

Water, § 20.3 — Federal license — Compliance with state requirements.

2. Sections 7767 and 7771 of Chap 363 of the Iowa Code (1939), prohibiting construction, maintenance, or operation of dams in navigable streams or in any other streams for manufacturing or power purposes and prohibiting diversion of water from such streams for industrial purposes unless a permit has been granted by the executive council, are such state laws as are contemplated by § 9(b) of the Federal Power Act, 16 USCA § 802(b), which requires submission to the Federal Power Commission of satisfactory evidence that an applicant for a license has complied with state laws, p. 346.

Water, § 6 — Powers of state — Permit for power project.

3. The Iowa statute requiring a permit from the state for construction, maintenance, or operation of dams in navigable streams is not unconstitutional as regulating matters within the exclusive jurisdiction of the Federal government, p. 347.

Water, § 2 — Federal and state jurisdiction — Navigable streams — Power project.

4. The jurisdiction of the Federal government over navigable streams, in

so far as the licensing of power projects is concerned, is not exclusive in nature and requiring a uniform rule of regulation, excluding altogether state regulatory legislation, p. 347.

Interstate commerce, § 4 — Federal and state regulation.

5. A state may legislate concerning local matters which Congress could have covered but did not in regulating related matters; and where the Federal law authorizes state action, such action is permissible even as to matters which could otherwise be regulated only by uniform national enactments, p. 347.

Water, § 2 — Federal and state regulation — Purpose of Federal Power Act.

6. Congress, in enacting the Federal Power Act, did not intend that the Federal government should occupy the field completely, or that the states should be excluded, but, on the contrary, the act contemplates a dual system of control and the exercise of appropriate powers by both governments, and this is the plain purpose of § 9(b) of the act, 16 USCA § 802(b), which requires submission to the Federal Power Commission of satisfactory evidence that an applicant for a license has complied with state laws, p. 347.

Statutes, § 5 — Presumption as to validity.

7. Courts must avoid the issue of constitutionality if a statute which is being interpreted is susceptible of any reasonable interpretation consistent with constitutionality, p. 347.

Appeal and review, § 7 — Premature attack on order — Federal denial of license — Failure to seek state permit.

8. An applicant for a license, under the Federal Power Act, authorizing construction and operation of a power project is in no position to challenge an order of the Federal Power Commission denying the license on the ground that the applicant has failed to meet the requirements of § 9(b) of the Federal Power Act, 16 USCA § 802(b), until it has first applied for a state permit and pursued such remedies as may be available in the state to establish its right to issuance of the permit, p. 347.

Water, § 6 — Federal and state regulation — Power project — Intent of Federal Power Act.

9. The Iowa statute requiring a state permit for construction, maintenance, and operation of dams in navigable streams and prohibiting diversion of water from such streams without a permit is not invalid on the ground that Congress, having elected to exercise in part the power delegated by the Commerce Clause, excluded the states from the area proportionately to its exercise of power and that such statute conflicts with the Federal Power Act and was superseded by it, p. 348.

Water, § 6 — Federal and state regulation — Power project — Intent of Federal Power Act.

10. Section 9(b) of the Federal Power Act, 16 USCA § 802(b), which requires submission to the Federal Power Commission of satisfactory evidence that an applicant for a license has complied with state laws, expresses the major intention of Congress that the states and the national government shall participate jointly in the development and regulation of water-power projects, and it effectively saves state laws with respect to bed and banks of streams and with respect to the appropriation, diversion, and use of water for power purposes, p. 348.

FIRST IOWA HYDRO-ELEC. COOP. v. FEDERAL POWER COM.

Water, § 20.3 — Federal license — Compliance with state requirements.

11. An order of the Federal Power Commission dismissing an application for a license, under the Federal Power Act, to authorize construction and operation of a power project, for failure to meet the requirements of § 9(b) of the Federal Power Act, 16 USCA § 802(b), requiring submission of evidence that the applicant has complied with state laws, should be sustained when it is admitted that no application has been made for a permit required under a state statute providing that whenever the erection of any dam will affect highways or state-owned lands the applicant shall, as a condition precedent, secure a permit from the board, commission, or other official body charged with jurisdiction over and control of said highways or state-owned lands, when it appears that the proposed project will flood many portions of United States and state primary highways, p. 353.

APPEARANCE: George B. Porter, of Washington, D. C., with whom Andrew G. Haley, of Washington, D. C., was on the brief, for petitioner; Howard E. Wahrenbrock, Assistant General Counsel, Federal Power Commission, of Washington, D. C., with whom Charles V. Shannon, General Counsel, Willard W. Gatchell and L. W. McKernan, Principal Attorneys, Federal Power Commission, all of Washington, D. C., were on the brief, for respondent; Neill Garrett, of Des Moines, Iowa, pro hac vice, by special leave of court, with whom John M. Rankin, of Des Moines, Iowa, and Horace L. Lohnes, of Washington, D. C., were on the brief, for intervener, state of Iowa; C. Walter Harris, of Washington, D. C., also entered an appearance for state of Iowa.

Before Groner, C.J., and Miller and Arnold, A.J.

MILLER, A.J.: Petitioner applied to the Federal Power Commission for a license to construct a power project on Cedar river in the state of Iowa. The Commission dismissed the application for the reason that, "The applicant has not presented satisfactory evidence, pursuant to § 9(b) of the Federal Power Act,[1] of compliance with the requirements of applicable laws of the state of Iowa requiring a permit from the State Executive Council to effect the purposes of a license under the Federal Power Act. . . ." (52 PUR(NS) 82, 85.)

On this appeal petitioner admits that it failed to secure a permit from Iowa and contends that it would have been futile to apply for one. The general rule is that administrative remedies must be exhausted before judicial review can be availed of.[2] "One who is required to take out a license will not be heard to complain, in advance of application, that there is danger of refusal. . . . He should apply and see what happens."[3]

[1] 16 USCA § 802: "Each applicant for a license under this chapter shall submit to the Commission . . . (b) Satisfactory evidence that the applicant has complied with the requirements of the laws of the state or states within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this chapter."

[2] Red River Broadcasting Co. v. Federal Communications Commission (1938) 69 App DC 1, 3, 98 F2d 282, 284, and authorities cited, note 3.

[3] Highland Farms Dairy v. Agnew (1937) 300 US 608, 616, 617, 81 L ed 835, 57 S Ct

[1, 2] To escape the operation of this rule, petitioner argues, in the alternative, that: [1] no applicable Iowa law requires one in its position to secure a permit; [2] if the Iowa law [4] means what its officials contend, then the law is unconstitutional, and compliance cannot be required. In support of its first proposition, petitioner says that the Iowa Code sections relied upon by the Commission are not state laws contemplated by § 9(b) of the Power Act, because by their very terms the authority of the State Executive Council is limited to waters of the state; and because they do not prohibit diversion of water for *power* purposes, but only for *industrial* purposes. Conceivably, Iowa might say that its legislature intended to speak only of waters navigable according to state classification, although not navigable under Federal classification.[5] While this is a possible interpretation and one which the state might adopt concerning the streams here involved—especially if it were necessary to do so in order to avoid the challenge of unconstitutionality—we are unable to adopt it, in the absence of a decision to that effect by the Iowa courts. Each of the disputed sections speaks in terms of *navigable* waters. In view of the fact that both state and Federal governments may legislate concerning such waters—each in its own appropriate sphere—we see no reason to give to Chap 363 the narrow interpretation for which petitioner contends. Again, § 7771 makes no distinction between power projects and industrial purposes. Its reference to diversion is general rather than special; in fact, it could be just as well argued that the state legislature was speaking, in this section, primarily of diversion for power production. Moreover, it can hardly be seriously urged that the state legislature was concerned over industrial pollution of its streams—because of the probable injurious effect upon public health and destruction of fish and other wild life—while, at the same time, unconcerned over the possible results of complete diversion of water from its streams. The reference to pollution is, in fact, secondary to the primary requirement concerning diversion; and some diversion usually occurs in connection with power projects. Neither is it reasonable to suppose that the state was concerned only with pollution of streams navigable under state classification as distinguished from other navigable streams. We conclude that the Commission properly rejected this contention.

549, 553; see also Goldsmith v. United States Board of Tax Appeals (1926) 270 US 117, 123, 70 L ed 494, 46 S Ct 215.

[4] The two sections of Chap 363 of the Iowa Code (1939) here in dispute, read as follows:

Section 7767—"No dam shall be constructed, maintained, or operated in this state in any *navigable* or meandered stream for *any* purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the executive council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same." [Italics supplied.]

Section 7771—"If it shall appear to the council that the construction, operation, or maintenance of the dam will not materially obstruct existing *navigation*, or materially affect other public rights, will not endanger life or public health, *and any water taken from the stream in connection with the project is returned thereto at the nearest practicable place* without being materially diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe." [Italics supplied.]

[5] Shortell v. Des Moines Electric Co. (1919) 186 Iowa 469, 172 NW 649.

[3–5] Petitioner's second, alternative contention challenges the Iowa law upon the ground of unconstitutionality. It assumes that the jurisdiction of the Federal government over navigable streams, in so far as the licensing of power projects is concerned must be exclusive in nature, requiring a uniform rule of regulation and excluding, altogether, state regulatory legislation. We conclude that this contention and the assumption upon which it is based are unsound. Where Congress, while regulating related matters, has purposely left untouched a distinctive part of a subject which is peculiarly adapted to local regulation, the state may legislate concerning such local matters which Congress could have covered but did not.[6] The fact that particular phases of an interstate activity have long been regulated by states, has been recognized as a strong reason why, in the continued absence of conflicting congressional action, the state regulatory laws should be declared valid.[7] The same reasoning should apply where Congress, having newly decided to enter a particular field of interstate commerce, leaves untouched regulatory state laws concerning part of the area. Where the Federal law *authorizes* state action, such action is permissible even as to matters which could otherwise be regulated only by uniform national enactments.[8]

[6] In enacting the Federal Power Act, it was not the intention of Congress that the Federal government should occupy the field completely, or that the states should be excluded. On the contrary, the act contemplates a dual system of control and the exercise of appropriate powers by the state, as well as by the Federal government.[9] This is the plain purpose of § 9(b). It is revealed, also, by other sections of the act.[10]

[7, 8] Petitioner's contention—upon the ground of unconstitutionality—depends also upon the assumption that the disputed Iowa Code sections constitute an absolute bar to its project, hence that their effect is to defeat the jurisdiction of the Federal government and the purposes of the Power Act. This contention must be rejected, also. It is the duty of courts to avoid the issue of constitutionality if the statute which is being interpreted is susceptible of any reasonable interpretation consistent with constitutionality.[11] All parties agree that Iowa's courts have not, so far, been faced with this issue. We see several possible interpretations of the disputed sections which would avoid the issue.

[6] See Hines v. Davidowitz (1941) 312 US 52, 68, 85 L ed 581, 61 S Ct 399, and authorities there cited.

[7] United States v. South-Eastern Underwriters Asso. (1944) 322 US 533, 548, 549, 88 L ed 1440, 64 S Ct 1162, Note 32.

[8] Cloverleaf Butter Co. v. Patterson (1942) 315 US 148, 155, 86 L ed 754, 62 S Ct 491, and authorities there cited.

[9] United States v. Appalachian Electric Power Co. (1940) 311 US 377, 428, 429, 85 L ed 243, 36 PUR(NS) 129, 61 S Ct 291; Alabama Power Co. v. Federal Power Commission (1942) 75 US App DC 315, 320, 44 PUR(NS) 197, 128 F2d 280, 285; Safe Harbor Water Power Corp. v. Federal Power Commission (1941) 44 PUR(NS) 330, 124 F2d 800, 806, 807.

[10] Sections 4(c), 4(f), 7(a), 10(e), 14, 19, 20, 27, 16 USCA §§ 797(c), 797(f), 800(a), 803(e), 807, 812, 813, 821.

[11] Crowell v. Benson (1932) 285 US 22, 62, 76 L ed 598, 52 S Ct 285, and authorities cited; Buttfield v. Stranahan (1904) 192 US 470, 492, 48 L ed 525, 24 S Ct 349; Nicol v. Ames (1899) 173 US 509, 514, 43 L ed 786, 19 S Ct 522; United States v. Gettysburg Electric R. Co. (1896) 160 US 668, 680, 40 L ed 576, 16 S Ct 427; Lewis Publishing Co. v. Morgan (1913) 229 US 288, 311, 57 L ed 1190, 33 S Ct 867.

For example, upon application properly made to it, the Executive Council might find the "nearest practicable place," [12] at which the water which is to be diverted for petitioner's project can be returned, is the point at which petitioner proposes to return it; or, perhaps, it might adopt petitioner's suggested interpretation that Chap 363 has no application to navigable waters of the United States. Again, it will be noted that § 7771 is so phrased as to vest large discretion in the Executive Council. The next succeeding section, 7772,[13] is phrased in negative terms: "No permit shall be granted. . . ." Evidently the legislature intended that failure to secure a certificate of the state department of health should bar the issuance of a permit. The contrast between the two sections is striking. While no departure from the requirements of the second is permissible, it is entirely within the range of probability that a court would so interpret the first section as to allow the issuance of a permit without strict compliance with all its terms; especially if it were necessary to do so in order to avoid unconstitutionality.[14] In any event, as the Power Act places upon petitioner the affirmative duty of showing compliance with state laws, it must assume their constitutionality, make its application for a permit and pursue such remedies as may be available in the state, to establish its right to issuance of the permit. Until it has done so, it is in no position to challenge an order of the Commission, which is based upon its failure to do so.

[9, 10] On this appeal the Commission argues that the Iowa statute is invalid.[15] It does so, however, not on petitioner's theory that Iowa invaded, or continued to occupy, an area absolutely prohibited to it by the Constitution, but rather that Congress, having elected to exercise, in part, the power delegated by the Commerce Clause, excluded the states from the area, proportionately to its exercise of power. It says, specifically, that the disputed Code sections conflicted with the Power Act and were superseded by it; [16] that to require petitioner's compliance with Chap 363 of the Iowa Code would oust the United States of jurisdiction and defeat the primary objectives of the Power Act.[17]

[12] See Iowa Code (1939) Chap 363, § 7771.

[13] Iowa Code (1939) Chap 363, § 7772: "No permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the state department of health has been filed with the council showing its approval of the use of the water for the purposes specified in the application."

[14] Cf. Nicol v. Ames, *supra*, 173 US at pp. 514 et seq; Buttfield v. Stranahan, *supra*, 192 US at pp. 492 et seq; Consumers Union of United States v. Walker (1944) 79 US App DC 229, 231, 145 F2d 33, 35.

[15] The Commission's position, as set out in its brief, is that the sole basis of its dismissal order was its finding that petitioner had failed to submit satisfactory evidence of compliance; but that § 9(b) of the Power Act does not require compliance with an invalid state law (United States v. Bellingham Bay Boom Co. [1900] 176 US 211, 217, 218, 44 L ed 437, 20 S Ct 343); that the lawfulness of its order depends upon the validity of the Iowa law, which was assumed by it because, as an administrative agency, it was without power to make a judicial determination of the question, or to disregard the presumption of validity of such laws. Davies Warehouse Co. v. Bowles (1944) 321 US 144, 153, 88 L ed 635, 52 PUR(NS) 65, 64 S Ct 474.

[16] See Hines v. Davidowitz (1941) 312 US 52, 85 L ed 581, 61 S Ct 399; Cloverleaf Butter Co. v. Patterson (1942) 315 US 148, 86 L ed 754, 62 S Ct 491.

[17] 56 Cong Rec 9109 (1918), Congressman LaFollette, speaking on behalf of the bill, said: "This, Mr. Chairman, brings me back to my first premise: That we should understand the genesis of this legislation; the reason for its coming into being and need for

The question thus presented is a difficult one. On the one hand, it is necessary that full scope shall be given to the Power Act in order that its beneficent purposes may be achieved in the expansion of our national economic life.[18] On the other hand, the established interests of the states and of their citizens must be protected and preserved so far as is possible,[19] in accommodating the one to the other. To answer the question, we are required to enter an area of controversy to which the Supreme Court has referred as "the wide range of possible disagreement between nation and state in the functioning of the Federal Power Act."[20]

The best we can do, under the circumstances, is to apply the standards which have been used by the Supreme Court, in analogous cases. Summarized briefly, the generally applicable principles are as follows: [1] When the question is whether a Federal act—within admitted Federal authority—overrides a state law, the rule is clear that state action may be excluded by clear implication or inconsistency,[21] just as well as by express language. In answering the question, however, the entire scheme of the statute must be considered.[22] [2] The expression of a purpose to limit the exertion of state power in some respects strongly suggests that Congress

its enactment. We have for many years been trying to develop more or less power from rushing or falling water in many states of the Union, and many power possibilities would have long ago been developed and be giving service to man if it were not for a divided authority. While the right of water control and the ownership and jurisdiction of bed and banks of our watercourses are admittedly in the states, the jurisdiction over the navigation of all streams being in the government the states could not well pass laws conferring upon private individuals rights to build dams across the streams, because the government could intervene and stop proceedings under the plea of control of navigation. It is true that some of the states have granted such rights, and dams have been built, and their legality upheld by the courts, and there have been many interesting questions raised and decisions rendered; but time forbids my going into that phase of this question. Building dams and developing water powers is usually a hazardous and costly undertaking. Men will not engage in it on uncertainties. Consequently with indefiniteness of tenure and occupation created by dual or divided authority but little development has been made. . . . This bill is brought here because it is apparent that we can get no development under a divided authority, and development is needed. Our not having greater development is inexcusable on any other ground than lack of grasp of the situation and inability to cope with it. This bill is not based on either the government's ownership or its sovereign authority, but on the hypothesis that we as representatives of the states have authority to act for the states in matters of this character and past laws for the general good, by the establishment of a limited trusteeship or commission composed of officials of the government, to carry out and administer this law in such a way as not to infringe any of the rights of the states nor to impede or restrict navigation, but rather to benefit it."

[18] Oklahoma ex rel. Phillips v. Guy F. Atkinson Co. (1941) 313 US 508, 85 L ed 1487, 61 S Ct 1050.

[19] Colorado v. Kansas (1943) 320 US 383, 392, 88 L ed 116, 64 S Ct 176; Nebraska v. Wyoming (1945) — US —, 89 L ed —, 65 S Ct 1332.

[20] United States v. Appalachian Electric Power Co. (1940) 311 US 377, 423, 85 L ed 243, 36 PUR(NS) 129, 145, 61 S Ct 291: "The briefs and arguments at the bar have marshaled reasons and precedents to cover the wide range of possible disagreement between nation and state in the functioning of the Federal Power Act. To predetermine, even in the limited field of water power, the rights of different sovereignties, pregnant with future controversies, is beyond the judicial function. The courts deal with concrete legal issues, presented in actual cases, not abstractions. The possibility of other uses of the coercive power of license, if it is here upheld, is not before us. We deem the pictured extremes irrelevant save as possibilities for consideration in determining the present question of the validity of the challenged license provisions. To this we limit this portion of our decision."

[21] Cloverleaf Butter Co. v. Patterson (1942) 315 US 148, 157, 86 L ed 754, 62 S Ct 491.

[22] Savage v. Jones (1912) 225 US 501, 533, 56 L ed 1182, 32 S Ct 715.

intended not otherwise to trammel the exercise of state power, in the same area.[23] [3] When the prohibition of state action is not specific but merely inferable from the scope and purpose of the Federal legislation, it must be clear that the Federal provisions are inconsistent with those of the state to justify the thwarting of state regulation.[24] [4] Congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by considerations which are persuasive of the statutory purpose.[25] [5] In ascertaining the scope of such legislation, a proper adjustment of the local and national interests must be, always, in the background.[26] To this end the primary test to be applied is not the mechanical one of whether the particular activity affected by the state law is part of interstate commerce, or the arbitrary one of whether the Federal legislation can be stretched to cover a particular project, but, rather, whether the over-all, competing demands of the state and national interests involved can be accommodated.[27] [6] The interest of the state in securing compliance with its statutes must be balanced against the effect of such control on interstate commerce in its national aspect.[28] [7] Absorption of state authority is, necessarily, a delicate exercise of legislative policy to achieve a wise adjustment between the needs of central control and the maintenance of strong local institutions.[29] [8] Where a Federal agency is authorized to invoke an overriding Federal power, except in certain prescribed situations, and then to leave the problem to traditional state control, the existence of Federal authority to act should appear affirmatively and not rest on inference alone.[30] This rule is applicable to the Federal Power Commission.[31]

Sometimes it is the purpose of Congress, in enacting legislation for the regulation of interstate commerce, to strengthen and assist state control and regulation, rather than to impair or diminish it.[32] The legislative history of the Federal Power Act reveals such an intention.[33] Consequently, we should not find in it contrary radiations, beyond the obvious meaning of its language, unless otherwise its major purpose would be defeated.[34]

[23] Mintz v. Baldwin (1933) 289 US 346, 351, 77 L ed 1245, 53 S Ct 611.

[24] Cloverleaf Butter Co. v. Patterson, *supra*, 315 US at p. 156, and authorities there cited.

[25] Maurer v. Hamilton (1940) 309 US 598, 614, 84 L ed 969, 60 S Ct 726, 135 ALR 1347.

[26] Federal Trade Commission v. Bunte Brothers (1941) 312 US 349, 351, 85 L ed 881, 61 S Ct 580.

[27] United States v. South-Eastern Underwriters Asso. (1944) 322 US 533, 548, 88 L ed 1440, 64 S Ct 1162, and note 31.

[28] Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co. (1942) 314 US 498, 506, 86 L ed 371, 42 PUR(NS) 53, 62 S Ct 384.

[29] Palmer v. Massachusetts (1939) 308 US 79, 84, 84 L ed 93, 31 PUR(NS) 242, 244, 60 S Ct 34, 37: "Therefore, in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress."

[30] Yonkers v. United States (1944) 320 US 685, 692, 88 L ed 400, 52 PUR(NS) 504, 64 S Ct 327.

[31] Connecticut Light & P. Co. v. Federal Power Commission (1945) 324 US 515, 89 L ed —, 58 PUR(NS) 1, 65 S Ct 749.

[32] Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 610, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281.

[33] Jersey Central Power & Light Co. v. Federal Power Commission (1943) 319 US 61, 76, 87 L ed 1258, 48 PUR(NS) 129, 63 S Ct 953.

[34] See Federal Trade Commission v. Bunte

The licensing authority of the Commission is broadly stated in the Power Act to cover projects which are "best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; . . ."[35] To the extent that a state law places *any* obstacle in the way of that broad objective it may be said to conflict with the Power Act. But that is not enough to show that the state law has been superseded. The Commission recognizes that the act limits its powers in some respects; that by express limitation the act "saves" some state laws from supersedure. Its theory may be summarized as follows: [1] In enacting the Power Act, Congress assumed that the usual rules as to supersedure would apply to state laws; [2] accordingly, it was necessary to include in the act explicit provisions to "save" those state laws which Congress wanted to leave in effect; [3] thus, § 27 specifically provided that nothing in the act "shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective states relating *to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses. . . .*" [Italics supplied]; [4] in contrast, § 9(b) of the act merely provides for the submission of information to the Commission by an applicant for a license, i. e., satisfactory evidence that it has complied with the requirements of state laws "with respect to bed and banks and to the appropriation, *diversion,* and use of water for power purposes. . . ." [Italics supplied.]; [5] accordingly, § 9(b) does not indicate any congressional intention to "save" a state law which would otherwise be superseded by the Federal Power Act because in conflict with the objectives of the act.

We cannot agree with the Commission's conclusion as to the effect of § 9(b). This section is the one which expresses the major intention of Congress that the states and the national government shall participate jointly in the development and regulation of water-power projects. It just as effectively "saves" state laws "with respect to bed and banks [of streams] and [with respect] to the appropriation, diversion, and use of water for power purposes" as does § 27 with respect to laws "relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses."[36] Any other inter-

Brothers (1941) 312 US 349, 351, 85 L ed 881, 61 S Ct 580.

[35] Federal Power Act § 10(a), 16 USCA § 803(a); see also § 7(a), 16 USCA § 800 (a): "In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under § 15 (16 USCA § 808) hereof the Commission shall give preference to applications therefor by states and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans." See generally § 4, 16 USCA § 797.

[36] The bill (S. 1419) as it passed the Senate contained this provision: " . . . before the permit shall be granted under this act, the permittee must first obtain, in such manner as may be required by the laws of

pretation would lead to unjust, if not absurd, results.[37]

In recognizing and safeguarding the concurrent interest of the states in hydroelectric developments, it was not the purpose of Congress to require their consent to the construction and operation of such projects, or to give, to the states, a veto power over them. The Federal Power Act contemplates coöperative action toward a common, beneficial end. There is no reason—revealed in the act or otherwise—why states in which water is used primarily for irrigation should stand in any different relation to the national government, in this respect, than states in which water is used primarily for other purposes. Consequently, if one state should, under the title of irrigation laws, provide, arbitrarily, that no Federal water-power project could be constructed or operated within its boundaries, that law would be just as fatally inconsistent with the Federal Power Act as would a similar enactment, in any other state, under any other title. On the other hand, it was not the purpose of Congress that the Commission should ride roughshod over any state, whatever the nature of its water laws, or give to a private corporation, licensed by it, the plenary power of eminent domain,[38] unless that corporation had first subjected itself to the state controls which protect the rights, powers, privileges and immunities of its other citizens. Carry-

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the states, the consent of the state or states in which the dam or other structure for the development of water power is proposed to be constructed."

The Senate bill was rejected by the House but the substitute House bill (H. R. 8716) as it was reported by the committee provided that an applicant for a license should submit to the proposed Commission: "Satisfactory evidence that the applicant has complied with the requirements of the laws of the state or states within which the proposed project is to be located with respect to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to effect the purposes of a license under this act."

Section 9(b) was amended to its present form by the House upon motion of Representative LaFollette, who, speaking on behalf of his amendment, said: "Mr. Chairman, in this section, by the provision that the applicant for a license shall have complied with the rules and laws of the state in regard to the diversion of water, we are trying not to infringe the rights of the states in that respect, and I wish to call the attention of the committee to the fact that many Supreme Court decisions in respect to states' rights as to water also refer to states' rights as to the beds and banks, and I would like to read from the latest United States Supreme Court decision upon this question, delivered on May 12, 1917. The opinion was delivered by Mr. Justice Pitney, and in that he says: 'The states have authority to establish for themselves such rules of property as they may deem expedient with respect to the streams of water within their borders, both navigable and nonnavigable, and the ownership of the lands forming their beds and banks.' In many states the law gives the riparian owner title to the middle of the stream. In other states only to the high-water mark. The property rights are within the state. It can dispose of the beds, or parts of them, regardless of the riparian ownership of the banks, if it desires to, and that has been done in some states. If we put in this language, which is practically taken from that Supreme Court decision, as to the property rights of the states as to the bed and the banks and to the diversion of the water, then it is sure that we have not infringed any of the rights of the states in that respect, or any of their rules of property . . . ." 56 Cong. Rec. 9810 (1918).

[37] Cf. Consumers Union of United States v. Walker (1944) 79 US App DC 229, 231, 145 F2d 33, 35, and authorities cited.

[38] Federal Power Act § 21, 16 USCA § 814: "When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the Commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain . . . ."

ing petitioner's argument to its logical conclusion, it would follow that if the Commission could be persuaded to make appropriate findings, a licensee might, by so specifying in its application, take over the state house for its headquarters office or flood the capital city for a storage basin.[39]

[11] In this connection the intervener calls to our attention, as an additional reason for upholding the Commission's order, § 7796 of the Iowa Code which reads as follows: "Whenever the erection of any such dam will affect highways or state-owned lands, the applicant shall as a condition precedent secure a permit from the board, Commission, or other official body charged with jurisdiction over and control of said highways or state-owned lands." The intervenor says, and petitioner does not deny, that as shown in the descriptive statement of the proposed project submitted to the Power Commission, many portions of the United States and state primary highways will be flooded; that, in the event the project is constructed, those highways will have to be rerouted and reconstructed; that petitioner admits it has made no application for the permit required by § 7796.[40] Nothing appears in the record to excuse petitioner's failure to comply with § 7796. For this reason alone, therefore, the Commission's order must stand.

But apart from § 7796, and considering only the two sections upon which appellant and appellee have made the case to turn, §§ 7767 and 7771, we conclude that the area of law covered thereby is so obviously within the domain of the state's power that congressional intention, to supersede the disputed state laws, must much more clearly appear[41] than it does in the Power Act. The maintenance of

[39] United States v. Southern Power Co. (1929) 31 F2d 852, 856: "While it is well settled that land devoted to a public use may be taken for another public use under the power of eminent domain, it is equally well settled that this may not be done, unless the intention of the legislature to that effect has been manifested in express terms or by necessary implication. . . . It is true that this rule is ordinarily applied in grants of power to public service corporations, and not where the power is being exercised by the state itself for its immediate purposes. . . . But it is based, not upon any lack of power upon the part of the government, but upon the presumed intention of the legislature, and should be held to apply in condemnation proceedings, even by the state itself, where the prior public use could not reasonably interfere with the purpose for which condemnation is authorized." The right of eminent domain is a sovereign one inherent in the Federal government and may be exercised without the consent of a state: Kohl v. United States (1876) 91 US 367, 23 L ed 449; Chappell v. United States (1896) 160 US 499, 510, 40 L ed 510, 16 S Ct 397. The fact that land within the state is already devoted to a public use does not limit the Federal government's power to condemn: United States v. Gettysburg Electric R. Co. (1896) 160 US 668, 681, 40 L ed 576, 16 S Ct 427. It may condemn public property held in a governmental or proprietary capacity by the states or their instrumentalities: Jefferson County v. Tennessee Valley Authority (1945) 146 F2d 564 (roads and highways); United States v. Nahant (1907) 82 CCA 470, 153 Fed 520 (sewers and water pipes); United States v. 4,450.72 Acres of Land (1939) 27 F Supp 167 (state game preserve); Missouri v. Union Electric Light & P. Co. (1930) 42 F2d 692 (land occupied by county courthouse and jail); United States v. Jotham Bixby Co. (1932) 55 F2d 317, affirmed sub nom., C. M. Patten & Co. v. United States (1932) 61 F2d 970, dismissed as moot (1933) 289 US 705, 77 L ed 1462, 53 S Ct 687 (municipal park); Stockton v. Baltimore & N. Y. R. Co. (1887) 32 Fed 9, 19, 20, appeal dismissed (1891) 140 US 699, 35 L ed 603, 11 S Ct 1028 (tide lands held by state in trust for public); Bedford v. United States (1927) 23 F2d 453, 56 ALR 360 (road); Georgia v. Chattanooga (1924) 264 US 472, 68 L ed 796, 44 S Ct 369 (state-owned railroad property in another state).

[40] Maurer v. Hamilton (1940) 309 US 598, 614, 84 L ed 969, 60 S Ct 726, 135 ALR 1347.

[41] See Florida v. United States (1931) 282 US 194, 211, 212, 75 L ed 291, 51 S Ct 119.

running streams, the preservation of wild life, the rights of riparian owners, long-established land titles,[42] drainage, sewage, and industrial waste disposal; these and many other problems of public health and public policy are involved. These are problems which should be worked out by diplomatic adjustment of state and national interests.[43] The Commission's licensee should be an agent toward this end, rather than an antagonist of the state and its other citizens.

It may be noted in passing that we are not concerned in this case with a situation in which Congress has elected to exercise the full power delegated by the Constitution.[44] The present case involves no more than the expressly limited powers of a government agency to license a private corporation which seeks to operate under the restrictive provisions of the Power Act. Needless to say, no findings or decision of the Commission could enlarge the scope of the act or increase the Commission's power under it. It would serve no useful purpose, for example, to produce electric power—thus carrying out the beneficent objective of the Federal Power Act—if by so doing the community to be served with electricity were turned into a barren, unpopulated waste. Again, if the result of constructing a power project were to strip one state of its water in order to serve the needs of another, it would require convincing evidence of legislative intention to justify it. If Congress wished to produce such results it would speak clearly and unmistakably. On the contrary, it has required an applicant to show that he has complied with the state laws. We think it meant compliance, not information that he has failed to comply.

A situation closely analogous to that of the present case may be found in Maurer v. Hamilton[45] where the Supreme Court was required to reconcile or strike down a Pennsylvania

[42] Hardin v. Jordan (1891) 140 US 371, 380, 381, 35 L ed 428, 11 S Ct 808, 838; Speech of Representative LaFollette, speaking on § 9(b), 56 Cong. Rec. 9810 (1918), *supra*, note 36.

[43] Parker v. Brown (1943) 317 US 341, 362, 363, 87 L ed 315, 63 S Ct 307, 319: "When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. . . . Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct', . . . not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health, and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause."

[44] Cf. Kohl v. United States (1876) 91 US 367, 374, 23 L ed 449; United States ex rel. Tennessee Valley Authority v. Powelson (1943) 319 US 266, 279, 87 L ed 1390, 63 S Ct 1047; Cloverleaf Butter Co. v. Patterson (1942) 315 US 148, 154–156, 86 L ed 754, 62 S Ct 491 and authorities cited; see Collins v. Yosemite Park & Curry Co. (1938) 304 US 518, 530, 82 L ed 1502, 58 S Ct 1009; Silas Mason Co. v. Tax Commission of Washington (1937) 302 US 186, 203, 82 L ed 187, 58 S Ct 233; James v. Dravo Contracting Co. (1937) 302 US 134, 147, 82 L ed 155, 58 S Ct 208, 114 ALR 318.

[45] (1940) 309 US 598, 84 L ed 969, 60 S Ct 726, 135 ALR 1347.

law whose purpose was to protect its people and its highways. It chose the former alternative. That case involved the Federal Motor Carrier Act [46] which, in § 204, conferred upon the Interstate Commerce Commission authority to regulate "safety of operation and equipment" of motor vehicles used by carriers in interstate commerce. Section 225 of that act reserved to the states power to regulate "sizes and weight" of motor vehicles. It was contended that the Pennsylvania statute, which prohibited the operation over its highways of any motor vehicle carrying any other vehicle over the head of the operator of such carrier vehicle, was superseded by rules and regulations promulgated by the Commission under the Motor Carrier Act. The Interstate Commerce Commission had interpreted the law in such manner as to permit such carriage. The Pennsylvania law constituted an insurmountable obstacle to it. The Supreme Court held there was no supersedure.[47] The test, then, is not whether a state law happens to block action which a Federal agency may chance to approve. Instead, it is whether the state law frustrates the operation of the Federal law, prevents accomplishment of its purpose, refuses to its provisions their natural effect;[48] whether, in short, the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[49] If it does, then it must yield. We conclude that no such showing has been made in the present case. The Commission, properly, insisted upon a good faith effort, by its applicant, to comply with the state law.

Affirmed.

Mr. Justice Arnold sat during the argument of this case; concurred in the result reached in this opinion, but resigned from the court before the opinion was completed.

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[46] 49 Stat 543 (1935) 49 USCA §§ 301–327.

[47] Maurer v. Hamilton, *supra*, 309 US at pp. 610, 611: "But the question remains whether the Pennsylvania statute is a regulation of 'size and weight' within the meaning of § 225, or whether it is a regulation of 'safety of operation and equipment,' which the Commission was authorized to make by § 204(a)(1)(2). Perusal of the present record can leave no doubt that in both a technical and a practical sense § 1033(c) is a regulation of weight and size of the loaded motor vehicle, and that the Pennsylvania legislature intended it to be such. By providing that the carried car shall not be loaded above the cab, the statute sets practical limits to the height of the loaded car and precludes its projection beyond the cab of the carrier car and into the line of vision of its driver. It is also a restriction on weight distribution of the loaded car and in its amended form specifically prohibits placing the 'weight' of the carried car above the driver. The highest court of the state has declared that such are the purposes of subsection (c), in order to avoid the safety hazards resulting from improper weight distribution and the height of the carried car at a point where it cannot be observed by the driver. As interpreted and applied by the state court, we can not regard the regulation as other than an exercise of the state's power to protect the safe and convenient use of its highways through the control of size and weight of motor vehicles passing over them, which it was the purpose of § 225 to reserve to the state from the grant of regulatory power to the Commission. Being thus reserved we think it is unaffected by the authority conferred on the Commission by § 204 to regulate 'safety of operation and equipment.'"

[48] Savage v. Jones (1912) 225 US 501, 533, 56 L ed 1182, 32 S Ct 715; Asakura v. Seattle (1924) 265 US 332, 68 L ed 1041, 44 S Ct 515, 634; Hines v. Davidowitz (1941) 312 US 52, 67, 85 L ed 581, 61 S Ct 399.

[49] Hines v. Davidowitz, *supra*, 312 US at p. 67; Cloverleaf Butter Co. v. Patterson, *supra*, 315 US at p. 157; cf. Hill v. Florida (1945) — US —, 89 L ed —, 65 S Ct 1373.

MISSOURI PUBLIC SERVICE COMMISSION

Public Service Commission of Missouri

v.

Capital City Telephone Company

Case No. 10,010
August 25, 1945

PROCEEDING *to obtain appraisal, audit, and other information for use of the Commission and to determine fair value of property of telephone company; original cost of property established and depreciation practices prescribed.*

Valuation, § 20 — Reproduction cost appraisal — Wartime conditions.

1. The Commission, in determining the value of utility properties, declined to establish cost of reproduction or cost of reproduction less depreciation as of 1942 in view of unsettled price levels during the war, p. 360.

Valuation, § 20 — Original cost determination — Wartime conditions.

2. The Commission believed it desirable that the original cost of telephone company properties be established in conformity with its accounting classification, in order that the continuing records of the company might have a foundation from which they might be carried forward, although it refused to find reproduction cost of the properties because of the unsettled wartime price levels, p. 360.

Accounting, § 8 — Original cost account — Telephone company.

3. The Commission, in finding the original cost of a telephone company's property used in public service and ordering that cost as found to be recorded on the company's books, adopted the company's cost figures, although differing from figures presented by the Commission's engineering department, where the difference between the cost figures was negligible, p. 360.

By the COMMISSION: This proceeding was instituted by the Commission by its order issued January 28, 1941, directing its engineering department to make an inventory and appraisal of the property of the Capital City Telephone Company, and its accounting department to make an audit of the company's books and records, for the purpose of furnishing information necessary to determine the fair value of the company's property and for use in any proceedings involving same that may come before the Commission. The engineering department's report, filed June 19, 1942, includes the engineers' estimate of cost of reproduction, cost of reproduction less depreciation, original cost, and original cost less depreciation, at August 31, 1941. The accounting department's audit of the company's books

at August 31, 1941, was filed August 17, 1942.

On March 16, 1943, the Commission issued an order directing that the hearing of the above-entitled case previously set for March 29, 1943, be continued to a date to be set by the Commission; that the work of the accounting department be advanced from September 1, 1941, to December 31, 1942, by verification of the expenditures for addition and betterments for that period and the operating revenues and expenses for the year ending December 31, 1942; and that the work of the engineering department be advanced from September 1, 1941, to December 31, 1942, to conform with its appraisal already filed in this case.

Following the completion of the investigation made by the engineering and accounting departments, and due notice having been given all interested parties, the case was heard before the Commission at its hearing room in Jefferson City on July 11, 1945. The company appeared by its counsel and president, and the Commission was represented by members of its legal, engineering, and accounting departments. The following members of the Commission staff, W. C. Ross, Chief Accountant, Guido Moss, Assistant Chief Engineer and G. R. Gilcrest, Engineer, testified in its behalf. M. S. Bodine, Company Engineer, testified in the company's behalf. No protestants or intervenors appeared. The following recitals, findings, and conclusions are based on all testimony or documentary evidence received at the hearing.

The record shows that the Capital City Telephone Company, hereinafter referred to as "Company," with general offices located in Jefferson City, Cole county, Missouri, owns and operates telephone property located in the city of Jefferson City, Missouri, and adjoining rural territory.

The property is comprised of land, buildings, aerial, and underground distribution systems, common battery central office equipment, switchboard, and station apparatus. In addition to furnishing local exchange and rural service, the Company furnishes toll service through Southwestern Bell Telephone Company equipment located in the Company's central office.

The Commission engineers' appraisal is a 2-volume report and shows the department's estimate as of August 31, 1941, for cost of reproduction, reproduction less depreciation, original cost, and original cost less depreciation for all property owned by the company. The appraisal classifies the property as property used in public service and property not used in public service. The testimony by Mr. Gilcrest revealed that the appraisal was based on a complete field inventory of the Company's property by Commission engineers and verified as correct by a Company representative.

Cost of Reproduction and Cost of Reproduction Less Depreciation

Cost of reproduction was determined by obtaining current manufacturer's quotations for material items to which was added comparable labor costs and structural overheads as well as general overheads, a procedure which conforms to accepted engineering practice and approved by the Commission in similar appraisals in the past.

During the progress of the analysis

of the appraisal which was made in order to bring it forward to December 31, 1942, it was found necessary to make certain adjustments and revisions in the cost of reproduction and cost of reproduction less depreciation estimates at August 31, 1941. The effect of these revisions, of the changes in price levels between August 31, 1941, and December 31, 1942, and of the additions and retirements during that same interval of time, is included in the following summaries of the property:

	Cost of Reproduction—December 31, 1942			
	Union Labor		Nonunion Labor	
	New	Less Depr.	New	Less Depr.
Property in use (Inc. Gen. Overheads)	$869,799	$779,149	$865,510	$775,426
Property not in use (Inc. Gen. Overheads)	107,639	96,108	107,640	96,109
Total Property	$977,438	$875,257	$973,150	$871,535
Materials and Supplies	17,163	17,163	17,163	17,163
Total all Property	$994,601	$892,420	$990,313	$888,698

It will be noted that the summaries show union labor and nonunion labor. This information was set out in order that the Commission might be informed regarding the difference in cost required to reproduce the property entirely with union employees and the amount required if nonunion employees were used in the unskilled classifications. The company questioned the reproduction of the property under the latter circumstances, but the Commission Engineers contended that their estimate provided sufficient funds to build the property. From the evidence it appears that the estimates for cost of reproduction and cost of reproduction less depreciation were made in accordance with methods ordinarily employed by the Commission staff.

Original Cost

The Commission engineers' determination of the original cost of this property at August 31, 1941, was made from an analysis of the abstracts, deeds, cash vouchers, payroll distribution, work orders, and other records of the Company's charges to plant accounts, including miscellaneous and sundry overheads. A review of the working papers supporting that determination revealed an omission of certain basic costs in the development of unit costs. In order to include that omission in the total, revised summaries were prepared and introduced as Commission Exhibit CE–2, which sets out the Commission engineers' corrected estimates as of August 31, 1941, as follows:

Property used in public service—including General Overheads	$700,458.70
Property not used in public service—including General Overheads	82,197.32
Total all property	$782,656.02
Materials and Supplies	17,124.65
Grand Total	$799,780.67

The revised original costs at December 31, 1941, were brought forward by deducting the adjusted retirements and adding the gross additions (as checked and verified by Commission accountants) for the period September 1, 1941, to December 31, 1942, and are summarized as follows:

Property in use—Inc. Gen. Overheads	$748,157
Property not in use—Inc. Gen. Overheads	75,096
Total all Property	$823,253

The Company Exhibit No. B also sets out a claim for original cost at December 31, 1942. This statement which is based on the Commission accountants' adjusted balance on August 31, 1941, plus gross additions and less gross retirements plus certain company adjustments, results in a total for account 100.1 of $747,810.14.

Annual Depreciation Requirement

The Commission engineers submitted Commission's Exhibit CE-5, a recommendation of annual depreciation rates to be employed by the Company in setting aside credit to its depreciation reserve. The recommendation appears to have been made from the Commission engineers' analysis of the Company's experience for the period January 1, 1926, to August 31, 1941, upon the experience of other companies with which the Commission staff has information, and upon their judgment regarding the company in question. The position of the Commission engineers is best set out in an excerpt from the testimony of Mr. Moss, as follows:

"In considering the rates to be recommended for this Company, a review was made of its depreciation experience for the period of January 1, 1926, to August 31, 1941. During that period the application of composite annual rates varying from 4.32 per cent to 5.13 per cent (a composite of 4.64 per cent for the past fifteen years) has increased the credit balance in the reserve from 0.24 per cent to 27.40 per cent. Our engineers estimated only 11 per cent accrued depreciation at August 31, 1941. A comparison of these two figures make it appear that the past rates were too high."

The Company also presented its claim relative to the rates required to maintain a sufficient reserve. The Company witness contended that because of the rapid growth of the Company which is now nearing the limit of its present switching capacity, and because of the increased cost of and difficulty in obtaining sufficient operating labor, it probably would be necessary to convert present manual central office equipment and station apparatus to automatic dial equipment. It was also contended that, at the present rate of growth, this conversion will become necessary not later than 1951, and that at the present rates of accrual to the depreciation reserve, there will not be a sufficient reserve set aside for the retirement of the old equipment, for the reason that it will not have lived the life originally estimated. The rates that the Commission engineers recommended and the rates now being used by the Company which it asked leave to continue to set up are set forth in the following tabulation:

Account No. and Title		Company Study In Use Per Cent Rate	Commission Engineers Recommendation Per Cent Rate
207	Right of Way	2.00	....
212	Buildings	2.00	2.00
221	Central Office Equipment	5.90	4.50
231	Station Apparatus	6.70	6.00

234	Private Branch Exchanges	5.80	5.00
235	Booths and Special Fittings	4.60	5.50
241.1	Exchange Pole Lines	5.40	5.00
241.2	Toll Pole Lines	4.90	4.00
242.1	Aerial Cable	4.00	4.50
242.2	Underground Cable	3.00	2.50
242.3	Buried Cable	4.00	4.00
243.1	Exchange Aerial Wire	7.10	8.50
243.2	Toll Aerial Wire	5.50	5.00
244	Underground Conduit	2.00	1.50
261	Furniture and Office Equipment	6.00	5.00
264-01	Motor Vehicles	14.40	
264-05	Other Tools and Work Equipment	10.00	12.00

The Commission accountants' audit shows the credit balance in depreciation reserve at August 31, 1941, of $184,022.53, or 27.40 per cent of the depreciable property at the end of the period. The credit balance at December 31, 1942, according to the Company's annual reports to the Commission, was $213,753.52, or 33.5 per cent of the original cost of the depreciable property as carried on the Company's books at December 31, 1942.

Conclusions

[1, 2] We have before us cost of reproduction and cost of reproduction less depreciation, and original cost figures at December 31, 1942. In view of rather unsettled price levels because of the war, we see nothing to be gained by the establishment at this time of cost of reproduction or cost of reproduction less depreciation at 1942. It appears, however, desirable that the original cost of the property be established (in conformity with our accounting classification) in order that the continuing records of the company may have a foundation from which they may be carried forward, and for that reason we propose to find original cost at December 31, 1942.

[3] Although not in complete accord, there is but a very minor difference in totals between the adjusted original cost as reflected by Company Exhibit B and the original cost estimates shown in Commission Exhibit CE-4. On the surface it would appear that we should not disturb the Company books by requiring it to adopt our engineers' figure. We realize that, under special circumstances, the improper classification to accounts may cause distortion which may result in improper depreciation accounting. We have tested this feature by the application of Commission engineers' recommended rates for depreciation to the respective showings and found that the difference between the amount when applied to Commission engineers' estimated original cost and that found when applied to the original cost as shown by the adjusted books of the Company is negligible. Because of the small difference involved in total, and the corresponding slight difference between the amounts of annual depreciation to be set up by the respective methods, and further because of the great amount of work and additional cost that would be required to recast the Company's books for this small item, we are of the opinion that the original cost of property used in public service as shown in Company's Exhibit B should be adopted.

We have examined carefully both Company and Commission engineers' testimony and exhibits regarding the

rates to be used by the Company in setting aside annual credits to its depreciation reserve. Although the Company has made a dire forecast as to the adequacy of its reserve upon conversion to automatic switching, we note that the Commission engineers' depreciation at December 31, 1942, of all depreciable property except central office equipment and station apparatus shows a composite of less than 11 per cent. On that basis the 16.36 per cent reserve remaining at May 31, 1945 (on the basis of Company estimate of retirements) does not seem greatly out of line. It is further observed that the company has before it no plans for immediate retirement of the switchboard or of conversion to dial operations. Certainly, before the time comes for switchboard retirement, the reserve will be considerably greater than it is in 1945, irrespective of whether Commission engineers' or company rates are used.

A study of the rates recommended by Commission engineers indicates that they have given consideration to the conditions about which the company complains, and that the rates thus recommended are higher than normal. We conclude that rates recommended by the Commission engineers give ample consideration to the contingency of immediate retirement and that they are adequate except that provision should be made for Account 207—Right of Way. For this latter item, we are of the opinion that the rate recommended by the Company is adequate.

Therefore, after due consideration, it is:

Ordered: 1. That the Commission finds the original cost of the property used in public service of the Capital City Telephone Company at December 31, 1942, was:

Acct.		
201	Organization	$275.05
207	Right of way	65.64
211	Land	39,179.99
212	Buildings	78,374.73
221	Central Office Equipment	133,505.78
231	Station Apparatus	135,684.76
232	Station Installations	29,702.91
233	Drop and Block Wires	40,686.11
234	Private Branch Exchanges	22,096.01
235	Booths and Special Fittings	362.19
241.1	Pole Lines—Exchange	55,744.86
241.2	Pole Lines—Toll	6,205.12
242.1	Aerial Cable	111,755.77
242.2	Underground Cable	33,244.09
242.3	Buried Cable	1,943.91
243.1	Aerial Wire—Exchange	7,279.62
243.2	Aerial Wire—Toll	2,320.12
244	Underground Conduit	27,360.70
261	Furniture and Office Equipment	11,529.86
264	Vehicles and Other Work Equipment	10,492.92
	Total, Account 100–1 Telephone Plant in Service.	$747,810.14

and that the Capital City Telephone Company be and it is hereby *ordered* to record such original cost in its books.

Ordered: 2. That the Capital City Telephone Company be and it is hereby directed to set aside from operating revenues annually a depreciation allowance based on the following percentages by accounts of its depreciable property used in public service:

Acct.		Rate in Percentage of Total Account
207	Right of way	2.0%
212	Buildings	2.0
221	Central Office Equipment	4.5
231	Station Apparatus	6.0
234	Private Branch Exchanges	5.0
235	Booths and Special Fittings	5.5
241.1	Pole Lines—Exchange	5.0
241.2	Pole Lines—Toll	4.0
242.1	Aerial Cable	4.5
242.2	Underground Cable	2.5
242.3	Buried Cable	4.0
243.1	Aerial Wire—Exchange	8.5
243.2	Aerial Wire—Toll	5.0

244	Underground Conduit	1.5
261	Furniture and Office Equipment	5.0
264	Vehicles and Other Work Equipment	12.0

and that these sums to be held in a depreciation reserve fund as specified in the Commission's classification of accounts.

Ordered: 3. That this report and order shall take effect ten days after this date and that the secretary of the Commission forthwith serve certified copies of same on all parties interested herein and that each of said parties shall notify the Commission before the effective date of this order in the manner prescribed in § 5601, Rev Stats Mo 1939, whether the terms of said report and order are accepted and will be obeyed.

NEW YORK SUPREME COURT, SPECIAL TERM, ALBANY COUNTY

Staten Island Edison Corporation

v.

Milo R. Maltbie et al.

— Misc —, 57 NY Supp2d 515
August 28, 1945

SUIT *in equity by public utility company to restrain enforcement of Commission orders reducing rates; complaint dismissed.*

Appeal and review, § 4 — Constitutional requirements — Question of confiscation.

1. A public utility company which has been ordered by the Commission to reduce rates is not deprived of constitutional rights by reason of a statutory requirement that it seek a review of the order by certiorari under Art 78 of the Civil Practice Act instead of suing in equity to restrain enforcement on the ground of confiscation, p. 363.

Injunction, § 28 — Against rate reduction order — Certiorari as proper remedy.

2. A complaint by a public utility company in an equity suit for injunction to restrain enforcement of an order of the Commission reducing rates, which order is alleged to be confiscatory, should be dismissed upon the ground that an adequate remedy at law exists by way of certiorari, under which neither the state nor Federal constitutional guaranty of due process is denied, p. 363.

APPEARANCES: Naylon, Foster & Shepard, of New York city (Jackson A. Dykman, of Brooklyn, of counsel), for plaintiff; Philip Halpern, Counsel to Public Service Commission, of New York city (George H. Kenny, of Albany, of counsel), for defendants; Ignatius M. Wilkinson, Corporation Counsel, of New York city (Francis J. Bloustein and Harry Hertzoff, both

of New York city, of counsel), for city of New York, amicus curiae.

ELSWORTH, J.: The plaintiff is a public utility engaged in the production, purchase, distribution, and sale of electricity throughout the county of Richmond, state of New York. On June 19, 1945, an order was adopted by the defendants, constituting the Public Service Commission of the state of New York, directing the permanent reduction of the plaintiff's rates for electric service furnished to its consumers. Such order was made as the result of an investigation instituted by the Commission on November 10, 1936, and which proceeding was broadened on November 10, 1937, to include an investigation of the rates, charges, or classifications of service for electricity sold by the plaintiff. In the determination of the matter sixty-three separate hearings were held. The testimony of witnesses produced both by the Commission and the plaintiff comprised 6,786 transcribed pages and hundreds of exhibits were offered. The Commission made detailed findings, its final memorandum consisting of 178 odd pages.

[1, 2] In the progress of the investigation, the Commission, acting under the powers conferred upon it by § 114 of the Public Service Law, on May 27, 1943, made a temporary rate order which directed the plaintiff to substantially reduce rates pending the proceedings before it for the filing of permanent rates and the adoption of an order therefor. The plaintiff, feeling aggrieved by the temporary rate order, challenged its validity by instituting: (1) A suit in equity to restrain its enforcement on the ground it was confiscatory, (2) a proceeding to review by certiorari under Art 78 of the Civil Practice Act. On motion of the Commission the complaint in the equity action was dismissed at special term on the ground that it did not state facts sufficient to constitute a cause of action and that the exclusive remedy of the plaintiff was a proceeding in certiorari. Such dismissal was approved by the appellate division with an opinion (1943) 267 App Div 72, 52 PUR(NS) 166, 45 NY Supp 2d 337, and by the court of appeals without opinion (1944) 292 NY 611, 55 NE2d 376. The certiorari proceeding was discontinued by stipulation.

To date it appears that the plaintiff has not sought to review the final rate order of June 19, 1945, by certiorari under Art 78 of the Civil Practice Act. Instead, it has brought the present plenary action in equity for a judgment permanently enjoining the enforcement of the aforesaid temporary and final rate orders upon the ground that its property is being taken without compensation through the imposition of rates which are confiscatory. In such action plaintiff claims to stand upon its constitutional right to the independent judgment of a court as to the law and facts with respect to such issue of confiscation and asserts that it is without adequate remedy at law, by certiorari, or otherwise. The complaint's allegations are denied generally by the defendants' answer and the first of the four separate defenses therein set forth alleges that the sole and exclusive remedy provided by law for review of the Commissioner's determination made on June 19, 1945, is a proceeding under Art 78 of the

Civil Practice Act, that such proceeding affords an adequate remedy at law, and that by reason thereof the plaintiff is not entitled to maintain this present suit in equity.

The plaintiff has moved here for a temporary injunction restraining the enforcement of the two aforesaid orders of the Public Service Commission and for an order striking out the defenses contained in the answer. The defendants have moved for judgment on the pleadings and for summary judgment under Rules 112 and 113, respectively, of the Rules of Civil Practice.

The question to be answered in deciding the various motions presented, briefly and concisely stated, is whether the plaintiff's exclusive remedy is review by certiorari under Art 78 of the Civil Practice Act. If so, plaintiff's complaint here in equity must fall.

The generally accepted procedure in this state for the review of rate orders of the Public Service Commission has been by certiorari under the provisions of said Art 78 of the Civil Practice Act, and this has been true where the issue of confiscation has been raised. People ex rel. Consolidated Water Co. v. Maltbie (1937) 275 NY 357, 20 PUR(NS) 375, 9 NE2d 961; People ex rel. New York & Q. Gas Co. v. McCall, 219 NY 84, PUR 1917A 553, 113 NE 795, Ann Cas 1916E 1042. A determination sustaining the complaint of the plaintiff in this action would wipe out that accepted method of review in any rate case where confiscation was claimed and properly pleaded in a suit in equity, and permit a redetermination by the court in an independent action of questions of fact which had been decided by the Commission.

While numerous decisions have been cited in the quite voluminous briefs submitted, the answer to the above question centers principally around the six following cases: People ex rel. Consolidated Water Co. v. Maltbie, *supra;* Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527; New York ex rel. Consolidated Water Co. v. Maltbie (1938) 303 US 158, 82 L ed 724, 22 PUR(NS) 136, 58 S Ct 506; People ex rel. Pennsylvania Gas Co. v. Public Service Commission, 211 App Div 253, PUR 1925C 608, 207 NY Supp 599; New Rochelle Water Co. v. Maltbie (1937) 248 App Div 66, 15 PUR (NS) 32, 289 NY Supp 388; Consolidated Water Co. of Utica v. Maltbie (1938) 167 Misc 269, 25 PUR (NS) 241, 3 NYSupp2d 799, and of which the holding of the New York court of appeals in People ex rel. Consolidated Water Co. v. Maltbie, *supra,* seems to me to be controlling. In that case, which was a rate case, the appellant maintained, as stated by the court in its opinion:

" . . . that the determination of the value of its property is arbitrary, based on erroneous methods, without competent evidence to support it, and is confiscatory; . . . that the order of the Commission to reduce its rates results in the confiscation of the company's property; . . . that the appellant had a right to have questions of fact relating to the issue of whether the rate is confiscatory, determined by the appellate division, through the exercise of its independent judgment. . . . that through

these errors it had been deprived of its property in violation of the provisions of the Constitution of the state . . . and of the Fourteenth Amendment to the Constitution of the United States." 275 NY at p. 364, 20 PUR(NS) at p. 378, 9 NE2d at p. 962.

In affirming the appellate division and sustaining the rate order made by the Public Service Commission, the court said:

"Upon the hearing of an order of certiorari to review a determination of the Commission, the jurisdiction and power of the appellate division are defined and limited by § 1304 of the Civil Practice Act. These powers do not include an independent consideration by the court of any question of fact. It is true that a determination by a legislative or administrative body on a question of fact is not binding upon a court where the power of the legislative or administrative body is challenged. Cf. Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527; Crowell v. Benson (1932) 285 US 22, 76 L ed 598, 52 S Ct 285; St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 80 L ed 1033, 14 PUR(NS) 397, 56 S Ct 720. Even so, where the state gives to an administrative body power to determine questions of fact by judicial inquiry subject to review in the courts, no Federal rights are denied by its order unless 'there was such a want of hearing or such arbitrary or capricious action on the part of the Commission as to violate the due process clause of the Constitution.' Except in the form of judicial review, the courts do not examine the question whether the evidence preponderates for or against a conclusion. People [of State of New York] ex rel. New York & Q. Gas Co. v. McCall, 245 US 345, 348, 62 L ed 337, PUR 1918A 792, 38 S Ct 122, 123." 275 NY at pp. 369, 370, 20 PUR(NS) at p. 382, 9 NE2d at p. 965.

It appears from the above-quoted language of the court that the question of confiscation and the right of an independent determination by the appellate division was squarely before the court of appeals in that case and I interpret its decision as having passed upon those questions and the conclusion being reached that the constitutional rights of the appellant were neither violated nor denied.

In the case of People ex rel. New York & Q. Gas Co. v. McCall, *supra*, cited in the foregoing opinion of the court of appeals, an order of the Public Service Commission of the state of New York, which required the relator to extend its gas mains and services, was sustained against claim of its violation of the due process clause of the Constitution. When that case was before the court of appeals, People ex rel. New York & Q. Gas Co. v. McCall, *supra*, it is important to note that the court said on the question of protection of the constitutional rights of public service corporations as follows:

"It was not intended that the courts should interfere with the Commissions or review their determinations further than is necessary to keep them within the law and protect the constitutional rights of the corporations over which they were given control." 219 NY at p. 88, PUR1917A at p. 555, 113 NE at p. 796, Ann Cas 1916E 1042.

No decision of the United States Supreme Court has been found or brought to my attention which holds that a review of the issue of confiscation in a rate case afforded by a certiorari proceeding under Art 78 of the New York Civil Practice Act is constitutionally inadequate to satisfy the requirements of due process. Many pages of the briefs submitted have been addressed to interpretations of the decision in Ohio Valley Water Co. v. Ben Avon, *supra,* and to a discussion of whether it has been overruled by the holdings of subsequent decisions of the United States Supreme Court. It seems unnecessary to pass upon that question here. The Ben Avon case was cited in the opinion, as hereinbefore quoted, of the court of appeals in People ex rel. Consolidated Water Co. v. Maltbie, *supra,* which case I have interpreted as controlling here. Suffice to say that the court of appeals by citing the Ben Avon Case in the manner in which it did could have found nothing therein in conflict with its own decision then being made. In People ex rel. Pennsylvania Gas Co. v. Public Service Commission, *supra,* which case is more fully considered in the next paragraph, the court in discussing the Ben Avon Case said:

"It does not follow, however, that the above decision in Ohio Valley Water Co. v. Ben Avon necessarily condemns the New York practice and interpretation in certiorari. The very fact that the practice of New York state has received substantial approval by the United States Supreme Court in as recent a case as People ex rel. New York & Q. Gas Co. v. McCall, *supra,* leads us to scrutinize the more carefully its more recent decision." 211 App Div at p. 257, PUR1925 at p. 613, 207 NYSupp at p. 602.

In supporting its claim to the existence of the right to a plenary judicial inquiry, the plaintiff relies heavily on the two following appellate division cases—People ex rel. Pennsylvania Gas Co. v. Public Service Commission, *supra,* and New Rochelle Water Co. v. Maltbie, *supra.* Each of these cases was a proceedings in certiorari and the opinions therein do not affirm as a matter of decision the existence of the two independent remedies of certiorari and a suit in equity. The negative statement in the opinion in the New Rochelle Case that the court had never held certiorari to be the exclusive remedy to review a rate order as confiscatory is not the equivalent of an affirmative holding that as an alternative to certiorari, an action in equity would lie. The statements therein made and relied upon here by the plaintiff were in the nature of obiter dicta. Significantly, both cases were determined prior to the decision of the court of appeals in People ex rel. Consolidated Water Co. v. Maltbie, *supra.*

Consideration now remains to be given to the decisions in the cases of Consolidated Water Co. of Utica v. Maltbie, *supra,* and New York ex rel. Consolidated Water Co. v. Maltbie, *supra,* which will be considered together. The opinion in the first above cited case held that under the facts therein existing an action in equity would lie for relief from alleged confiscation and, referring to the per curiam opinion of the Supreme court in Consolidated Water Co. v. Maltbie, *supra,* stated: "Whatever may have

been the uncertainties of our judicial policy heretofore, I think we are bound in deference to that opinion to entertain this action." 167 Misc at p. 276, 25 PUR(NS) at p. 247, 3 NYSupp2d at p. 807. Such holding was made by the special term after the public utility in question had pursued its remedy of certiorari through the appellate division (1935) 245 App Div 866, 282 NYSupp 412, and the court of appeals, People ex rel. Consolidated Water Co. v. Maltbie, *supra,* and to the United States Supreme Court, *supra.* In the United States Supreme Court, it was contended that the appellant was "entitled to the exercise of the independent judgment of a court as to the law and facts with respect to the issue of confiscation," 303 US at p. 159, 22 PUR(NS) at p. 137, 58 S Ct at p. 507, and that such review had not been accorded by the state practice. The United States Supreme Court refused to pass upon that question, holding that the appellant itself sought review by certiorari and had not invoked plenary jurisdiction of a court of equity, which remedy it did not appear was unavailable under the state law, citing the cases of Pennsylvania Gas Co. v. Public Service Commission, *supra,* and New Rochelle Water Co. v. Maltbie, *supra.* That decision in no way determined that the appellant's constitutional rights of due process had been violated or abridged by the New York procedure of review. The foregoing special term decision (1938) 167 Misc 269, 25 PUR(NS) 241, 3 NY Supp2d 799, has never been passed upon by the appellate courts. As above pointed out, it was made only after certiorari had been exhausted. No like situation here presents itself where review through an action in equity is being sought in the first instance.

The creation by the legislature of administrative agencies such as the Public Service Commission has been generally approved and not frowned upon by the courts of this state. People ex rel. New York & Q. Gas Co. v. McCall, *supra.* As far back as the year 1916 the court of appeals in that case said:

"The Public Service Commissions were created by the legislature to perform very important functions in the community, namely, to regulate the great public service corporations of the state in the conduct of their business, and compel those corporations adequately to discharge their duties to the public and not to exact therefor excessive charges. It was assumed perhaps, by the legislature that the members of the Public Service Commissions would acquire special knowledge of the matters intrusted to them by experience and study, and that when the plan of their creation was fully developed they would prove efficient instrumentalities for dealing with the complex problems presented by the activities of these great corporations." 219 NY at p. 88, PUR 1917A at p. 555, 113 NE at p. 796.

The legislature provided a statutory method for reviewing the Public Service Commission's determinations by certiorari proceedings under Art 78 of the Civil Practice Act. This has been the method commonly used and generally accepted. To sustain the plaintiff's position here is to circumvent that method and is equivalent to saying that the policy of the courts of

this state has been in rate cases, such as the one now before me, to so limit the review accorded in certiorari as to leave open the alternative remedy in equity here claimed. This I cannot hold. People ex rel. Consolidated Water Co. v. Maltbie, *supra*, 275 NY 357, 20 PUR(NS) 375, 9 NE2d 961. The conclusion is accordingly reached that the plaintiff's complaint should be dismissed upon the ground that an adequate remedy at law exists by way of certiorari under which neither the state nor Federal constitutional guaranty of due process is denied.

The defendants' motion for judgment on the pleadings dismissing the plaintiff's complaint under Rule 112 of the Civil Practice Rule is granted, and in view of such holding the defendants' motion for summary judgment under Rule 113 of the Civil Practice Rule is denied upon the ground of being academic. Plaintiff's motion for temporary injunction is denied, and plaintiff's motion to strike out the separate defenses is also denied as being academic in view of the above determination that the complaint is insufficient.

No costs are awarded either party. Submit orders.

CALIFORNIA DISTRICT COURT OF APPEAL, SECOND DISTRICT, DIVISION 3

J. P. Butler

v.

Bell Oil & Refining Company

Civ. 14908
— Cal App2d —, 161 P2d 559
September 7, 1945

APPEAL *from judgment for plaintiff in action for difference between minimum rate, prescribed by Commission, and lower rate paid by shipper pursuant to contract; affirmed.*

Payment, § 16 — Recovery of undercharges — Effect of contract.

1. The Highway Carriers' Act authorizes a contract motor carrier to recover from a shipper the difference between the minimum rate prescribed by the Commission and a lower rate agreed to and accepted by the carrier at the time service was rendered, p. 369.

Rates, § 649 — Establishment of minimum charges — Notice to shipper.

2. Notice to a shipper of a Commission hearing relating to the establishment of minimum rates for contract motor carriers is not necessitated by the fact that the shipper has to pay the difference between the legally estab-

lished rate and lower rates for which he was able to bargain privately; and such liability does not mean that the shipper is being regulated, but is merely an incident in aid of the effective enforcement of Commission rate orders, p. 369.

APPEARANCES: John W. Preston, Oliver O. Clark, and Robert A. Smith, all of Los Angeles, for appellant; Henry W. Wyatt and Elmo L. Morris, both of Los Angeles, for respondent.

Fox, Justice pro tem: Defendant appeals from a judgment in favor of plaintiff, who brought this action as the assignee for collection of the Bradley Truck Company. Plaintiff's assignor was at all times herein engaged in business as a licensed highway contract carrier under the Highway Carriers' Act (Stats 1935, Chap 223, p. 878, as amended by Stats of 1937, p. 2006 and 1939, p. 1814, respectively; Deering's Gen. Laws, Act 5129a, as amended), transporting property for compensation by motor vehicle over the public highways of the state. As such highway contract carrier, plaintiff's assignor transported crude oil for defendant (and its predecessor) from certain wells to defendant's refinery. It charged and collected freight charges less than the minimum rates prescribed by the California Railroad Commission for such services. Plaintiff, therefore, seeks to recover the difference between the legally prescribed rate and the rate paid by the defendant pursuant to a purported contract with said carrier.

[1] In the language of the appellant, "the sole question here presented is: Does the Highway Carriers' Act permit a suit by the carrier to collect from the shipper a higher rate of transportation than that solemnly agreed to and accepted by it at the time the service was rendered?" This question has been answered in the affirmative by the recent decision of this court in the case of Gardner v. Rich Mfg. Co. (1945) 68 CalApp2d —, 158 P2d 23. It was there stated (158 P2d at p. 25): "The schedule of minimum rates . . . [established by the Railroad Commission] became a part of every contract between a highway contract carrier and the shipper. [Citing cases.] The tariff applicable, on the facts, to any particular shipment cannot be changed by an agreement between the parties . . . and the carrier or its assignee is entitled to collect the proper rate. [Citing authorities.] Otherwise the statute would be ineffectual for the purpose for which it was enacted."

[2] The only argument here advanced that was not presented in the Gardner Case is that the act does not and was not intended to regulate the conduct of the shipper; that to enforce the tariff established by the Railroad Commission against the appellant is, in effect, to regulate the shipper, and that said tariff is not binding on appellant because the act does not require notice to be given to the shipper. It is true, as stated in Entremont v. Whitsell (1939) 13 Cal2d 290, 300, 29 PUR(NS) 31, 38, 89 P2d 392, 397, that "The statute does not cover shippers, but carriers, ..." The collection of undercharges, however, is simply a step toward making the

authorized regulation of highway carriers more effective. It is in furtherance of the purposes of the act, among which are the establishment of just and reasonable rates and the prevention of discrimination. Gardner v. Rich Mfg. Co. *supra*. As pointed out in Johnston v. L. B. Hartz Stores (1938) 202 Minn 132, 23 PUR (NS)207, 210, 277 NW 414, 416, "the permitting of such a recovery is a much more effective way of enforcing the law than any other could possibly be." Fines and penalties may be imposed on the carrier for violating the minimum schedule of rates fixed by the Commission but, as is also pointed out in the Johnston Case, "the pressure of the shippers upon the carriers for reduced rates in violation of the statute will almost entirely be relieved if the shippers know that notwithstanding any illegal bargain that is made, recovery may still be had on the basis of the minimum rate fixed by the Commission. Collusion between the carrier and the shipper to circumvent the law, which would otherwise be easy of accomplishment, will be practically eliminated." 23 PUR(NS) at p. 210, 277 NW at p. 416. The fact that the shipper has to pay the difference between a legally established rate (appellant does not dispute the legality of the tariff here involved), and a lesser rate for which he was able to bargain privately, does not mean that the shipper is being regulated. It is merely an incident in aid of the effective enforcement of the Railroad Commission's order. Hence notice to the shipper of the hearing before the Commission for the purpose of fixing a schedule of minimum rates for highway contract carriers is not necessary. If appellant's theory were sound and carried to its logical conclusion, it would follow that acts of the legislature would not be binding on those who did not have notice of such contemplated legislation. This, of course, is not the law.

Appellant relies on Entremont v. Whitsell, *supra*. We find nothing in that case which supports a conclusion different from that herein reached. It might, however, be noted that the court there upheld the order of the Railroad Commission which required the carrier to collect the amount of the undercharges.

The judgment is affirmed.

Desmond, P. J., and Parker Wood, J., concur.

Re Arizona Airways

Docket No. 9304-L-5859, Decision No. 15798
September 17, 1945

APPLICATION *for authority to operate aircraft as intrastate common carrier; granted subject to conditions. For denial of motion for rehearing, see post, p. 373.*

Certificates of convenience and necessity, § 77 — Economic feasibility of operation — Air carriers.

1. One of the factors which must be considered in passing upon an application for authority to operate a transportation service by aircraft is whether or not proposed operations are feasible from an economic standpoint, in view of the history of other methods of transportation unwisely attempting operation not justified by the return possible, p. 372.

Certificates of convenience and necessity, § 101.2 — Transportation by aircraft — Unscheduled service.

2. Unscheduled service by aircraft directly related to the needs of areas served, thereby avoiding costly flights without a pay load, was approved as conservative and closely related to a policy requiring economic survival, p. 372.

By the COMMISSION: This matter was instituted by the filing of an application by Arizona Airways, Inc., an Arizona corporation, for a certificate of convenience and necessity authorizing the operation by it of motor vehicles, that is, aircraft, as a common carrier over the air lanes between Phoenix, Arizona, and certain other points in Arizona. This application requested a certificate as a common carrier engaged in the transportation of passengers, express, and freight over the air lanes without specifying the time and number of flights and without listing the description of the motor vehicles to be operated.

The applicant sought a certificate to operate between Phoenix, Superior, Miami, Globe, Safford, Morenci, Willcox, Benson, and Tucson. At the hearing the applicant stipulated it did not propose to compete with the established service of American Airlines between Tucson and Phoenix, and agreed that its application might be limited to service between the areas and communities named excluding transportation of passengers between Tucson and Phoenix either way.

A number of other applications were filed and a consolidated hearing held, after which all applications were taken under advisement. The Commission has been very reluctant to act in the matter because of its concern for the public convenience and safety and also because of its realization that the field is largely unchartered and there has been no substantial evidence

submitted as to the effect upon the economic life of the applicants in the event a certificate should be granted.

[1] We realize that one of the factors which must be considered is whether or not the proposed operations are feasible from an economic standpoint, for the history of other methods of transportation is replete with examples of unwise attempts at operation not justified by the return possible from the operation.

[2] Upon the hearing the applicant testified to facts which convinced the Commission that its proposed operation is to be conservative and closely related to a policy requiring economic survival. The service it proposes to offer is unscheduled and is to be directly related to the needs of the areas served, thereby avoiding costly flights without a pay load.

Many citizens from Safford and the other communities appeared in support of the application, bringing to the attention of the Commission the fact that this populous area is entirely without adequate transportation service with other areas of the state by rail and even by bus. As is well known, the Gila valley is one of the most fertile in the state and is the site of the Gila Junior College.

The Commission is of the opinion that it is warranted at this time to authorize this operation, subject to certain safeguards to be set forth and incorporated in the order granting the application. We feel that this service will be sufficiently restricted that it will be kept on a paying basis rather than permitted to drift into insolvency through operation of unprofitable schedules.

It is accordingly the order of the Commission that a certificate of convenience and necessity be, and the same is hereby, granted to Arizona Airways, Inc., an Arizona corporation, authorizing the operation by it of motor vehicles, to wit, aircraft, as a common carrier over the air lanes and airways of the state of Arizona between the communities and cities of Phoenix, Superior, Miami, Globe, Safford, Morenci, Willcox, Benson, and Tucson, and each of them, except between the cities of Tucson and Phoenix, in an unscheduled common carrier service transporting passengers, express and freight, subject, however, to the following restrictions and limitations:

1. Applicant shall not begin service under this certificate unless and until applicant shall have available for use two motored aircraft capable of maintaining altitude with full load on one motor at an altitude of 6,000 feet.

The foregoing shall be taken as a minimum requirement which all aircraft operating common carrier service in the state of Arizona shall meet.

2. Applicant shall not render service to or land at, except as an emergency landing, any communities not having airports available for landing which meet the requirements and specifications of a CAA Class 2 airport.

3. Applicant shall, as rapidly as business justifies, establish a scheduled service in whole or in part over the air lanes over which it is hereby authorized to operate as a common carrier, as herein specified.

4. Applicant before instituting service shall file with the Commission a full and complete description of the motor vehicles proposed to be operated in said service and shall file with

e Commission policies of public bility insurance, to be approved by e Commission and to remain and continue in force so long as operations are carried on under this certificate.

ARIZONA CORPORATION COMMISSION

Re Arizona Airways

Docket No. 9304-L-5859, Decision 15821
October 2, 1945

MOTION *for rehearing on application for certificate of convenience and necessity authorizing operation of aircraft as common carriers; motion denied. For decision on application, see ante, p. 371.*

Monopoly and competition, § 101 — Notice to present utility — Air carriers — Common carrier and unscheduled charter service.

1. A certificate of convenience and necessity for common carrier service by aircraft is not competitive with rights of air carriers authorized to operate in unscheduled charter service and, therefore, is not within the rule that a certificated carrier in a given field must be given notice of the necessity of further additional service before another certificate can be granted, p. 373.

Certificates of convenience and necessity, § 165 — Necessity of notice to present operators — Air carriers.

2. Air carriers having operating rights limited to the operation of aircraft in an unscheduled charter service, which is in no sense a common carrier operation, are not entitled to notice of an application for a certificate of convenience and necessity authorizing common carrier service by aircraft, p. 373.

By the COMMISSION: After careful consideration of motion for rehearing filed by Sky Harbor Air Service, Inc., and G & G Airlines seeking a rehearing in the above-entitled matter, Decision No. 15798, dated September 7, 1945, ante, p. 371, we are of the opinion and find:

[1, 2] Recognizing the rule long observed by this Commission that a certificated carrier in a given field must be given notice of the necessity of further additional service before another certificate can be granted or its certificate revoked, it is our opinion that the operating rights of Sky Harbor Air Service, Inc., and G & G Airlines are limited to the operation of aircraft in an unscheduled charter service, which is in no sense a common carrier operation and, accordingly, the certificate granted Arizona Airways, Inc., is in no manner competitive with any rights of Sky Harbor

Air Service, Inc., of G & G Airlines.

Further, it will be noted that in the order granting a certificate to Arizona Airways, we required that the applicant file schedules and establish a scheduled service as soon as such a course becomes feasible and we, therefore, think it clearly appears of record that the certificate granted was a common carrier certificate and not a cha ter or unscheduled contract carri certificate.

We are, therefore, of the opinio that none of the reasons set forth the motion for rehearing of the Sk Harbor Air Service, Inc., and G & Airlines are well taken, and that sa motion for rehearing should be an the same is hereby denied.

WEST VIRGINIA PUBLIC SERVICE COMMISSION

Re The Hope Natural Gas Company

Case No. 2968
September 27, 1945

APPLICATION *for authority to increase natural gas rates to certain classes of consumers; dismissed.*

Return, § 72 — Reasonableness as a whole — Rates for part of business — Natural gas.

An application for authority to increase natural gas rates for certain classe of customers should be denied when it is not shown or contended tha revenue realized from intrastate operations is not sufficient to pay neces sary operating expenses, including taxes and depreciation, and a reasonable return on the value of property used and useful, since, if revenue fro one segment of the business is insufficient, the revenue from another i excessive.

By the COMMISSION: This proceeding came on to be heard this 27th day of September, 1945, upon the application of The Hope Natural Gas Company, a corporation, for authority to change rates, tolls, and charges for natural gas supplied to Class II and Class III consumers, in the case of all such consumers in the communities of Parkersburg, Williamstown, and St. Marys, using in excess of 2,000,000 cubic feet of gas per month, and in the case of all such consumers in all other territory in West Virgini served by applicant including the com munities of Clarksburg, Weston Paden City, Mannington, and Mario county, using in excess of 6,000,00 cubic feet per month; upon proof o the giving of notice of the filing o said application and hearing thereon upon the protests filed herein and in tervention of the Office of Price Administration; upon the evidence ad duced at hearings held herein and the applicant's report to this Commissio

for the calendar year of 1944 which was made a part of the record at the request of counsel for the Office of Price Administration; and upon briefs of counsel filed herein.

Upon consideration of all which, including the authorities cited in briefs of counsel, the Commission is of the opinion and finds that no useful purpose would be served by reviewing in detail the evidence herein; that the authority sought by the applicant to increase its rates for natural gas supplied to its consumers in Classes II and III should be denied, for the reason that it does not attempt to show, nor does it contend, that the revenue realized by it from its intrastate operations is not sufficient to pay its necessary operating expenses, including taxes, incident to said operations and provide for depreciation in and a reasonable return on the value of its property used and useful in said operations; and that if its revenue is sufficient for the purposes mentioned, it follows that if the revenue from one segment of its business is insufficient the revenue from another is excessive, and if the rates for one should be increased the rates for the other should be reduced, which obviously cannot be done in this proceeding.

Upon like consideration the Commission is of the opinion and finds that this proceeding should be dismissed without prejudice to the applicant's filing an application for authority to make such adjustments in its rates for intrastate domestic, commercial, and industrial service as the facts presented in support thereof may warrant.

It is, therefore, *ordered* that the application filed herein by The Hope Natural Gas Company, a corporation, for authority to change rates, tolls, and charges for natural gas supplied to Class II and Class III consumers, in the case of all such consumers in the communities of Parkersburg, Williamstown, and St. Marys, using in excess of 2,000,000 cubic feet of gas per month, and in the case of all such consumers in all other territory in West Virginia served by applicant including the communities of Clarksburg, Weston, Paden City, Mannington, and Marion county, using in excess of 6,000,000 cubic feet per month, be, and it hereby is, denied.

It is *further ordered* that this proceeding be, and it hereby is, dismissed without prejudice to the applicant's filing an application for authority to make such necessary adjustments in its rates for intrastate domestic, commercial, and industrial service as the facts presented in support thereof may warrant.

SECURITIES AND EXCHANGE COMMISSION

Re Ebasco Services Incorporated

File No. 37-31, Release No. 6085
September 28, 1945

AMENDMENT *to declaration under § 13 of Holding Company Act setting forth provisions of pension plan proposed by subsidiary service company; no adverse findings made as to plan. For earlier decision, see (1940) 7 SEC 1056, 35 PUR (NS) 258.*

Expenses, § 49 — Pension plan of service company.

1. No adverse findings as to a pension plan of a subsidiary service company were deemed necessary under § 13(b) of the Holding Company Act, 15 USCA § 79m(b), although the Commission doubted the propriety of provisions in the plan for proportionately higher contributions by the company where monthly compensation would be in excess of $250, where the plan was stated to have been drawn on sound actuarial principles and had been tentatively found by the Treasury Department to meet the standards of the Internal Revenue Code and the regulations thereunder with respect to nondiscrimination in favor of supervisory employees or highly compensated employees, p. 377.

Intercorporate relations, § 19.92 — Subsidiary service company — Pension plan.

2. The Commission, in passing upon a proposed pension plan of a subsidiary service company, must not only consider the plan in the light of the standards of § 13(b) of the Holding Company Act, 15 USCA § 79m(b), but must also consider the question whether approval of the plan would interfere with the requirements of § 11(b), 15 USCA § 79k(b), p. 377.

Labor, § 10 — Plan of service company.

Terms of pension plan submitted by subsidiary service company under § 13 of the Holding Company Act, 15 USCA § 79m, p. 378.

By the COMMISSION: On August 21, 1940, this Commission entered an order with respect to a declaration and amendments thereto, filed pursuant to § 13 of the Public Utility Holding Company Act of 1935, 15 USCA § 79m and the Rules and Regulations thereunder, by Ebasco Services, Incorporated ("Ebasco"), a wholly owned subsidiary service company of Electric Bond and Share Company ("Bond and Share"), a registered holding company (File No. 37-31). In such order, the Commission deferred action with respect to whether Ebasco was so organized and conducted as to meet the requirements of § 13 (b) of the act on the ground that the

record was insufficient to determine this issue.[1] Pending completion of the record, however, Ebasco was permitted to continue its servicing business subject to certain conditions.[2]

The record in that proceeding disclosed, among other things, that, since April 1, 1938, when Ebasco filed a declaration as a subsidiary service company, Ebasco had been making accruals to a "Reserve for Contingencies" in an annual amount of $124,000 and that such accruals were charged to associate client companies as a part of the cost of performing services for such companies. The declarants stated that the funds so accumulated were to be used for the purpose of establishing a pension system for the employees of Ebasco. However, there were no safeguards which gave assurance that the funds would be used for this purpose and no actual pension plan had then been put into operation.

We noted at that time that, since no pension plan had as yet been formulated, we could make no determination that the accruals to the contingency reserve constituted a proper element of cost which could be included in charges for services to associate client companies. We also expressed the opinion that, under the circumstances, the accruals represented improper charges which should be refunded to the operating companies and that further accruals should cease. However, we deferred an order to this effect in order to enable Ebasco to submit a definitive pension plan for our approval. Pending the resolution of this question, Ebasco filed a stipulation to the effect that no part of the reserves then accumulated, or any future accruals thereto, would be transferred to surplus or otherwise be made available for the payment of dividends by Ebasco.

A pension plan was subsequently submitted by Ebasco, but the provisions of the plan were such as to raise doubts as to whether its operation would result in costs properly includible in charges for service to associate client companies. While further examination of the matter was made by our staff, however, we permitted Ebasco to continue accruals to the reserve pending modification of the plan submitted or the submission of a new plan.

[1, 2] Ebasco has now filed an amendment (designated Amendment No. 4) to the declaration with respect to which we issued our findings and opinion on August 21, 1940, which amendment contains a modified version of the plan as originally submitted. The revised plan is based on joint monthly contributions by Ebasco and its employees and enables employees, with the assistance of Ebasco, to obtain retirement allowances after age sixty-five. The contributions are to be deposited with Bankers Trust Company under a declaration of trust which authorizes the trustee to invest all moneys received under the terms of the trust and to pay out retirement allowances in accordance with the provisions of the pension plan. The

[1] To meet the requirements of § 13(b), a subsidiary service company of a registered holding company must be so organized and conducted as to assure efficient and economical performance of services, construction, or sale of goods for the benefit of associate companies, at cost, fairly and equitably allocated among them.

[2] Re Ebasco Services Incorporated (1940) 7 SEC 1056, 35 PUR(NS) 258.

terms of the modified plan may be summarized as follows:

Each employee in the regular service of the company who has attained age thirty and who has completed one year of continuous service with the company will be eligible for membership in the plan. The amount of retirement allowance at the time of retirement will depend upon the period of participation in the plan and the employee's salary during such period. The plan provides that "future service" benefits will be financed in part by employee contributions equal to 3 per cent of the first $250 of monthly compensation and 4½ per cent of compensation in excess of $250 per month, and in part by approximately equal contributions by the company. "Future service" benefits will be paid based upon 1 per cent of that part of each month's compensation up to $250, plus 1½ per cent of that part of each month's compensation in excess of $250 for each year of service rendered after the effective date of the plan. "Past service" benefits which will be provided entirely by the company, will consist of an annual retirement allowance based on 1 per cent of the monthly rate of compensation as of the effective date of the plan for each year of "past service." The maximum retirement allowance which may be paid under the plan is $12,000 per annum.

Tentative computations by Ebasco indicate that, on the basis of its present staff, company contributions will approximate $231,000 annually, of which $143,000 will be applicable to "past service" benefits and $88,000 to "future service" benefits. Employee contributions are estimated to aggregate $76,500 annually. The computations are based on utilization of funds in the amount of $885,000 which have been accumulated by Ebasco from April 1, 1938, to March 31, 1945, through accruals of approximately $124,000 annually to a pension reserve. Ebasco states that it proposes to allocate the cost of company contributions to the plan to job orders from associate client companies as a part of the salary costs incurred in connection with such job orders.[3]

Ebasco states that, on the basis of a preliminary examination of the pension plan and declaration of trust, but subject to verification in tax returns as filed, the Treasury Department has rendered an opinion that company contributions to the plan will be allowed as deductions from taxable income and that the income on the trust fund will be tax-exempt. Ebasco also states that it will be permitted, on the basis of present Treasury regulations, to amortize against taxable income

[3] According to the record, all continuing contractual arrangements between Ebasco and associate client companies have now been severed and Ebasco had modified its method of allocating costs to such companies so as to provide for charging all costs of rendering services to specific orders for services from associate client companies. Salary charges and other identifiable costs are charged to such orders as direct expenses. Overhead expenses are charged to such orders in the following ratios: (1) In the case of departmental overhead expenses, in the ratio which direct salary charges bear to total direct departmental salaries; (2) in the case of section overhead expenses, in the ratio which direct salary charges bear to total direct section salaries; and (3) in the case of corporate overhead expenses, in the ratio which direct salary charges bear to total direct corporate salaries. For services ordered by groups of client companies, the same procedure is followed in making charges to group orders, but with special provisions for distribution of the group cost to the members thereof.

er a 10-year period of the cost of nefits already provided through ac- uals to the pension reserve, which ccruals were not previously deduct- le because no pension plan was in tual operation. Accruals to this re- rve, as we have noted, aggregate 885,000 to March 31, 1945, and asco estimates that amortization of is amount, over a 10-year period on e basis of approximately 40 per cent come tax rates, will result in tax sav- gs of approximately $39,000 per nnum during such period.

Conclusion

The pension plan submitted by Ebasco is stated to have been drawn n sound actuarial principles and has een tentatively found by the Treasury Department to meet the standards of he Internal Revenue Code and the Regulations thereunder with respect to ondiscrimination in favor of "em- loyees who are officers, shareholders, ersons whose principal duties con- ist in supervising the work of other mployees, or the highly compensated mployees." [4] While we have had some loubt as to the propriety, under the tandards of § 13(b), of those provi- ions in the plan which provide for roportionately higher contributions y the company where monthly com- ensation is in excess of $250, we have concluded that such differences are not sufficiently substantial to warrant disapproval on our part. Under the circumstances, we are of the opinion that the pension plan may be placed in operation by Ebasco without contravening the standards of § 13(b) with respect to performing its services for the benefit of associate companies efficiently and economically, at cost, and we make no adverse findings with respect thereto.

In addition to the consideration which we must accord the proposed pension plan in the light of the standards of § 13(b), we must also consider the fact that § 11(b) of the act, 15 USCA § 79k(b), may require steps to be taken with respect to Ebasco's organization and operations and with respect to the relations of the Ebasco organization with Bond and Share, its corporate parent, and with its associate serviced companies.[5] We would, of course, be unable to approve any plan which was so set up as to in any way interfere with the requirements of § 11(b). We are, however, satisfied that such interference will not eventuate as a result of Ebasco's adoption of the pension plan here proposed. Our action herein should be understood to be without prejudice to our full consideration of the status of Bond and Share and Ebasco under § 11(b)

[4] The following excerpt from the Treasury Regulations (§ 29, 165-1, Employees' Trusts) indicates the kind of standards which a pension trust must meet to qualify for tax exemption: "The plan must benefit the employees in general, although it need not provide benefits for all of the employees. Among the employees to be benefited may be persons who are officers and shareholders. However, a plan is not for the exclusive benefit of employees in general if it discriminates either in eligibility requirements, contributions, or benefits by any device whatever in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees."

[5] Steps which have already been ordered by the Commission pursuant to § 11(b)(2) of the act include the liquidation by Bond and Share of three of its subholding companies, National Power & Light Company, American Power & Light Company, and Electric Power & Light Corporation respectively. In addition, Bond and Share has recently filed plans (File No. 54-127) which will, if consummated, have the effect of divorcing it from its present domestic utility business.

of the act. We are not, of course, definitively approving the plan at this time and we will continue to study its operation and will require Ebasco to effect such changes therein as may subsequently appear necessary in order to ensure conformance with the act and the Rules and Regulations thereunder.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Lake Superior District Power Company

2–U–2072
October 5, 1945

APPLICATION *for authority to revise commercial power rates; granted.*

Rates, § 323 — Electric — Commercial power — Load count.
A standardized rate for commercial power service, eliminating load-count rates which frequently result in discrimination, should be approved.

By the COMMISSION: The Lake Superior District Power Company, Ashland, Ashland county, by application filed with this Commission on July 23, 1945, requests authority to establish a revised commercial power electric rate schedule.

Notice of investigation and hearing and assessment of costs was issued on August 18, 1945.

Hearing: September 6, 1945, at Ashland before Examiner Helmar A. Lewis.

APPEARANCES: John Forse, Vice President, Ashland, and Glen H. Bell, Attorney, Madison, for Lake Superior District Power Company; H. J. O'Leary, Chief, Rates and Research Department, of the Commission Staff.

The record indicates that the proposed rate is intended to replace and supersede five separate schedules, namely,

Schedule	Cp–1,	..... sheet	33
"	Cp–2,	..... "	34
"	Cp–3,	..... "	35
"	CpO–1,	..... "	41
"	CpO–2,	..... "	42

Approximately 400 customers are involved. One hundred and thirty customers would be increased about $3,000 per year and 270 customers would receive decreases of approximately $13,000 per year, making a net annual reduction in revenues of $10,000.

The proposed rate would apply throughout the territory served by the company and is in keeping with the trend toward rate simplification and standardization. The rates to be superseded were mainly load-count rates which depend upon accurate load-count data. The record shows that the company experienced con-

siderable difficulty in keeping up-to-date records of load count with the result that discrimination in rate application occurred frequently. The proposed rate is not based on load count (except in the case of minimum bill users) and hence avoids, in the main, the discrimination referred to above.

Most of the increases would be experienced by 2 and 3 horsepower minimum-bill users and many of these may be able to avoid an increase by combining such single-phase power loads with their commercial lighting loads.

Findings

The Commission finds:

1. That the present power rate schedules Cp-1, Cp-2, Cp-3, CpO-1, and CpO-2, of the Lake Superior District Power Company, are unreasonable and discriminatory.

2. That the rates applicable to commercial power service of said company as prescribed by the following order are reasonable.

ORDER

It is therefore *ordered:*

1. That Lake Superior District Power Company discontinue the application of rate schedules Cp-1, Cp-2, Cp-3, CpO-1, and CpO-2.

2. That it place in effect on all bills dated on and after November 1, 1945, the following power rate:

Commercial Power

Effective in:

All cities, villages, and hamlets where the company furnishes service under its residential and commercial light rate schedules, and in rural areas to customers with a load in excess of 10 kilowatts, single-phase, and to customers with 3-phase motors of 5 horsepower or more, provided that the company's distribution lines are of sufficient capacity to furnish such service.

Availability:

Available for the use of service for power purposes where the installed capacity of motors aggregates 2 horsepower or more.

Monthly Demand Charge:

$1.50 per kilowatt of measured demand for each kilowatt in excess of 50 kilowatts.

Rate

First	200	kw.	hr.	used	per	month	at $.055
Next	1800	"	"	"	"	"	" .03
Over	2000	"	"	"	"	"	" .025

Minimum Monthly Bill:

Fifty cents per horsepower or fraction thereof connected with a minimum of $2.00.

Terms of Payment:

Customers' monthly bills will be computed at the net rate and there will be added to the total net bill a sum equivalent to 10 per cent of the first $25 of the bill and 1 per cent of the balance which will be collected only from customers who fail to pay in full within sixteen days from date of bill.

NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

Samuel Shillitani

v.

Lewis J. Valentine, Police Commissioner of City of New York et al.

269 App Div 568, 56 NY Supp2d 210
June 27, 1945

APPEAL *from order dismissing petition against police commissioner and directing telephone company to restore service denied because of alleged gambling use; order modified and, as modified, affirmed. For decision below, see (1945) 184 Misc 77, 58 PUR(NS) 34, 53 NY Supp2d 127.*

Mandamus, § 1 — Clear legal right as basis.

1. A peremptory order may not issue in a proceeding in the nature of mandamus under Art 78 of the Civil Practice Act unless the petitioner has a clear legal right to the relief which he seeks, p. 382.

Service, § 134 — Denial because of police action — Illegal gambling operations.

2. A telephone company is within its rights in refusing to reinstate telephone service, disrupted by police officers, where the subscriber was using the telephone to a large extent for unlawful gambling activities and the police have not approved restoration of service, although the subscriber was discharged in a criminal proceeding, p. 382.

(UNTERMYER and COHN, JJ., concur in part.)

Before Martin, PJ., and Untermyer, Dore, Cohn, and Callahan, JJ.

APPEARANCES: Ralph W. Brown, of New York city (Irving W. Young, of New York city, of counsel; Edward F. Snydstrup and Jordan R. Bassett, both of New York city, on the brief), for appellant New York Telephone Co.; Ignatius M. Wilkinson, Corporation Counsel, of New York city (Harry Zamore, of New York city, of counsel), for appellant Lewis J. Valentine, Police Commissioner; Millard E. Theodore, of New York city, for respondent.

PER CURIAM:

[1, 2] In proceedings in the nature of mandamus under Art 78 of the Civil Practice Act, it is a fundamental rule that a peremptory order may not issue unless the petitioner has a clear legal right to the relief which he seeks. Leitner v. New York Teleph. Co.

1938) 277 NY 180, 186, 24 PUR (NS) 289, 13 NE2d 763, 765. On all the facts and circumstances disclosed in this record, it seems clear that petitioner was using the telephone in question to a large extent for unlawful activities in violation of Penal Law §§ 986 and 991, and there was enough to indicate that the facilities of the telephone company were being used to further illegal gambling operations.

That the petitioner was discharged by the magistrate "does not of itself prove the falsity of the charge." People ex rel. Restmeyer v. New York Teleph. Co. (1916) 173 App Div 132, 134, 159 NY Supp 369, 371. Petitioner is invoking the equity powers of the court and equity will not lend its aid to further the Commission of illegal or criminal acts. Petitioner has failed to show a clear legal right to the relief here asked.

A request of the law enforcement officers to the telephone company to discontinue the telephone service would, under the circumstances here disclosed, be sustained if complied with, People ex rel. Restmeyer v. New York Teleph. Co. *supra*, 173 App Div at p. 133, 159 NY Supp at p. 370, and it was unnecessary for the police to remove the telephone in the manner in which it was removed in the first instance. But, on this record, the telephone company was within its rights in refusing to reinstate the service.

The order appealed from should be modified so as to direct a dismissal of the petition against both respondents-appellants on the merits and, as so modified, affirmed with costs and disbursements to the respondents-appellants.

Order modified so as to direct a dismissal of the petition against both respondents-appellants on the merits and, as so modified affirmed with costs and disbursements to the respondents-appellants. Settle order on notice.

Martin, PJ., and Dore and Callahan, JJ., concur.

Untermyer, J., concurs in the dismissal of the petition as against the appellant New York Telephone Company; but votes to affirm as to the police commissioner for the reasons stated in the opinion of Mr. Justice Cohn.

COHN, J., concurring in part: Upon the record I do not concur in the finding that the special term erred in deciding that petitioner was not using the telephone in his private dwelling for bookmaking in violation of § 986 of the Penal Law. However, according to petitioner's testimony, for over a period of six months he had been using his telephone service for the purpose of placing many bets with bookmakers for himself, two partners, and a friend. By statute all wagers or bets upon a horse race (except at authorized race tracks) are declared to be unlawful (§ 991, Penal Law). Though the wagers are not made a crime by statute, the activity is condemned as unlawful and illegal. (Cf. also §§ 990 and 992, Penal Law.) Where, as here, the telephone equipment was used to a large extent for such unlawful activities, appellant New York Telephone Company was justified in refusing to reinstate its service to petitioner.

The special term has found that the police commissioner is not vested by law with any authority to approve or disapprove requests for telephone service and that in an application for restoration of telephone equipment and service no such consent or approval is required; that, accordingly, he is neither a necessary nor a proper party to this proceeding. It is greatly to be desired that a telephone company should coöperate in every lawful manner with the police department in combating crime. However, there does not appear to be any authority in law which compels a telephone company to make its restoration of telephone service dependent upon the approval of the police commissioner or of any other city agency.

The order should, accordingly, be modified so as to direct a dismissal of the petition against appellant New York Telephone Company on the merits and it should be affirmed as to appellant Valentine upon the ground that he is not a necessary or proper party to the proceeding.

Kuhlman Saf-T-Kuhl Transformers are filled with an inert cooling fluid which is non-inflammable and non-explosive. This 100% safety eliminates the need for installation vaults and reduces secondary copper requirements. Hence, Saf-T-Kuhl Transformers can be installed close to center of electric load—off the floor on beams, if necessary—to provide better power regulation. • The model illustrated is a 100 KVA Saf-T-Kuhl, rated three phase, 60 cycle, 480 volts primary, 240 volts secondary, with two 5% minus taps. This model typifies the fine design and engineering that have made Kuhlman Saf-T-Kuhls especially valuable for installation in plants undergoing modernization or expansion programs. • Kuhlman also builds a complete line of Power, Distribution, Dry Type and CSP Transformers, as well as Line Regulators and allied electric power equipment. Write for complete information on how Kuhlman can bring more efficient power regulation to your plant.

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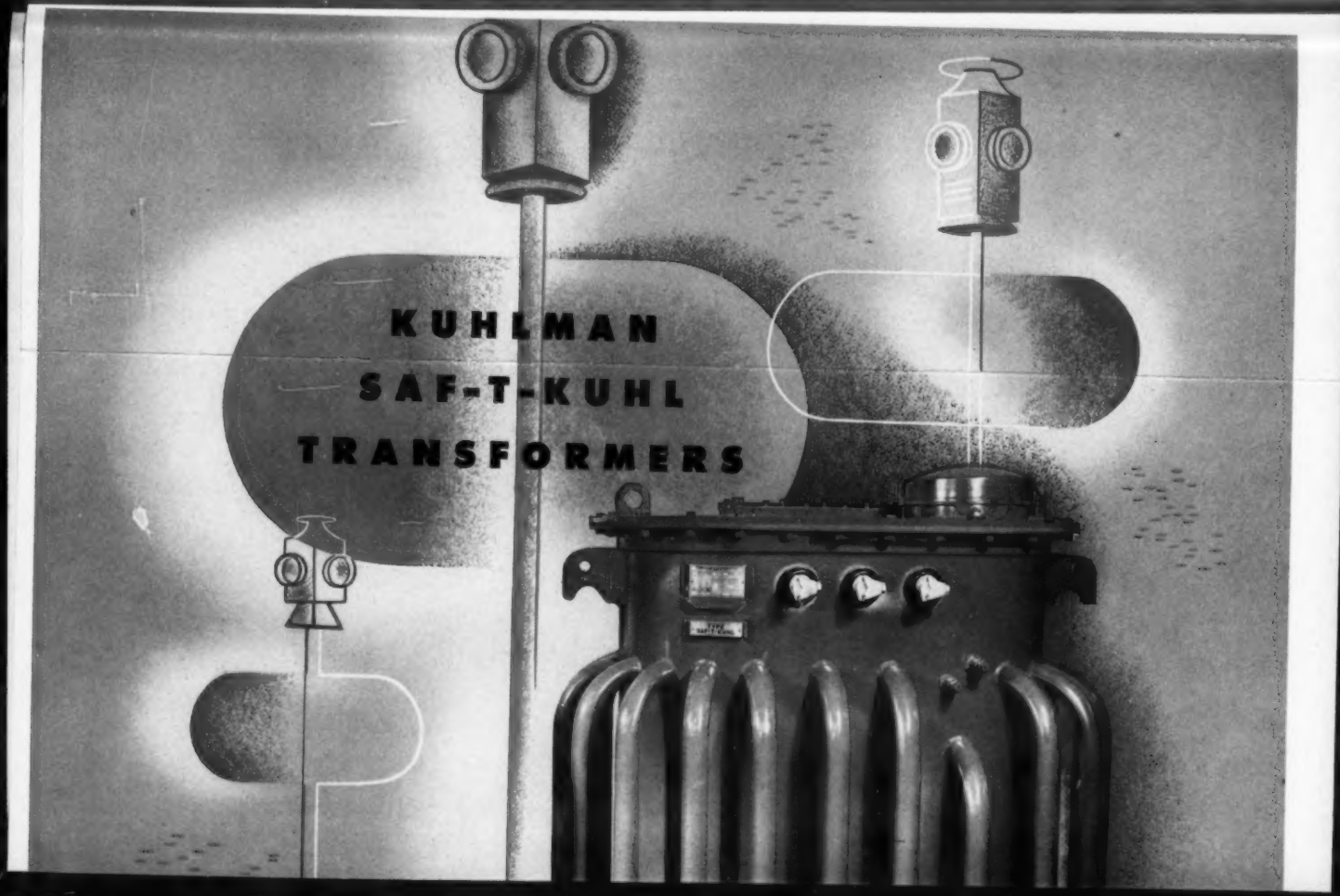
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Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Small Power Plant Designed for Use in College Labs

A MINIATURE educational power plant, designed to permit convenient study of all operations of any type of industrial or city standard power plant, has been developed by the General Electric Company for use in laboratories of engineering colleges, it was announced recently.

The complete, coördinated "packaged" unit occupies a floor space of only 10 by 15 ft. and stands approximately six feet high in contrast to a standard power plant that would need a two-story, half-block long building to house it. Total weight of the unit is approximately 20,000 lbs. as contrasted to some 1,000,000 lbs. a city power plant would weigh.

Despite this diminutive size, the "Lilliputian" power plant embraces all equipment component to its commercial "big brothers" including two 20-kilowatt steam turbine generators, a motor with a genuine "load," complete four panel switchgear equipment, a condenser, miscellaneous piping, and a foundation.

During operation, total power of 40 kilowatts generated by two steam turbine generators is dissipated by an electric motor "load," driven by a water break. The unit requires only a supply of steam ranging from 125 to 250 lbs. and a source of circulating water for condensing purposes.

Tabulating Machines Institute Opened by Remington Rand

OPERATION of a training institute for government personnel and a tabulating service bureau has been undertaken by Remington Rand, Inc., tabulating machines division, with the opening of the Remington Rand Tabulating Machines Institute in Washington on December 10th.

The Remington Rand Tabulating Machines Institute will assist government officials in the application of Remington Rand punched-card accounting methods to complex government problems, first, by affording educational opportunities for government personnel and, second, by providing tabulating facilities for government departments which do not ordinarily maintain tabulating installations. The service bureau will be supervised by Carmen Ortasic.

The educational program of the Tabulating Machines Institute will be under the direction of H. L. Hughes and will include conferences and forums on tabulating machine methods for administrative personnel of the Federal government. Supplementing these conferences, special lectures will be held for larger groups.

In addition, civil service employees will be given opportunities for training in tabulating machines operation, both in preparation for civil service examinations and for advancement in civil service status. Applicants for admission to the school will be referred by the Civil Service Commission.

Further information regarding the Remington Rand Tabulating Machines Institute may be procured by contacting the tabulating machines division of Remington Rand Inc., either at the home office, 315 Fourth avenue, New York 10, New York, or the Washington branch office, 1615 L street, N. W., Washington 6, D. C.

Cable Tester and Locator Produced by Dillon

W. C. DILLON & COMPANY, INC., 5410 W. Harrison street, Chicago 44, Illinois, has announced the production of the Stewart cable tester and locator, a combination of cable and pipe locator with Stewart cable tester.

The new instrument can locate shorts, crosses, grounds, and wet spots. In simple operation it tells just where cable or pipe is buried, and just how deep, and has a lamp circuit for checking all connections after test has been set up.

It is furnished with detector coil and neutral exploring coil, and has been designed to cover the needs of industrial concerns, public utilities, light and power fields, telephone service, forestry, and many others.

The unit is ruggedly built, portable, measures 12½ in. by 7½ in. by 11 in. high, and weighs approximately 22 lbs. It includes head phones, neutral exploring coil, and fish scale exploring coil. The case is finished in walnut brown.

New Labels Developed

QUIK-LABELS have been developed to speed up and simplify the marking or coding of wires, motor leads, harnesses, circuits, conduits, relays, coils, terminal boards, fuse blocks, cables, etc., according to a recent an-

(*Continued on page* 34)

(*Continued from page* 33)

nouncement by the W. H. Brady Company. They provide permanent, legible identification, stick quickly, without moistening, to any round or flat surface.

Precut to exact size, Quik-labels come on code cards ready for instant use. Labels are peeled from the card by means of a self-starter feature which automatically exposes the ends of the labels, permitting them to be pulled off quickly. Quik-labels are designed to provide permanent, legible identification and can be used for production or maintenance.

More than 200 different code cards are available, including 14 colors, to meet the requirements of all types of electrical production and maintenance problems. Special code cards can be designed to meet specific situations. A free sample card and literature will be supplied by the Brady Company, 2910Z, East Linwoode ave., Milwaukee 11, Wisconsin.

Taft to Assist Dever

MARSHALL B. TAFT, formerly of the Aero division, Minneapolis-Honeywell Regulator Company, has been made assistant to Henry F. Dever, president of the Brown Instrument Company, Philadelphia industrial division of the Honeywell organization.

Mr. Taft was for three years administrative assistant to the vice president of the Aero division in Chicago. Prior to that time he was practicing law in Minneapolis.

Harvester Buys Huge Melrose Park War Plant

INTERNATIONAL HARVESTER COMPANY will use the former Buick aviation engine plant at Melrose Park, Illinois, Chicago suburb, for expanded production of its industrial power line of products, it has been announced by H. T. Reishus, general manager of the company's industrial power division.

The greater portion of the plant's 1,200,000 sq. ft. of manufacturing floor space will be used for the production of Diesel motors. These motors will power Harvester's line of crawler tractors. Other motors are sold to manufacturers of equipment who use the Harvester motors to power their machines. The plant will be known as the Melrose Park Works of the International Harvester Company.

In addition to the line of Diesel motors, one 65-horsepower gasoline engine, one large new model of crawler tractor—the TD-24—and a full line of stationary power units will be made in the plant, Mr. Reishus said. It is possible the company may also use parts of the plant for other purposes.

International Harvester also announces that it is now on the air with a major network program. With Raymond Massey as master of ceremonies, the program also includes Howard Barlow's 70-piece orchestra, Lynn Murray and a 20-voice choir, Gladys Swarthout, Jan Peerce, Igor Gorin, and many others as guest stars. The program is entitled, "Harvest of Stars."

Rockwell Manufacturing Announces Changes

DIRECTORS of the Merco Nordstrom Valve Company, subsidiary of the Rockwell Manufacturing Company, of Pittsburgh, are announcing the shortening of the company name to Nordstrom Valve Company.

The Nordstrom Valve Company builds Nordstrom lubricated plug valves, air and service cocks, Nordco lubricants, and valve accessories. The principal manufacturing facilities for Nordstrom valves are located in Oakland, California, with additional facilities in Pittsburgh and East Chicago, Indiana.

No changes in the personnel or sales policies of the company have been made.

At a special meeting held on November 30th, stockholders approved the recommendations of the board of directors that the name of the Pittsburgh Equitable Meter Company be changed to the Rockwell Manufacturing Company, and that stock be split, four shares for one.

Directors of Pittsburgh Equitable will continue as directors of Rockwell Manufacturing. Col. Willard F. Rockwell, for whom the company is named is chairman of the board and president. Serving with him on the board are J. Frank Drake, Meredyth H. Ewing, Edgar W. Meyers, Henry A. Phillips, and Willard F. Rockwell, Jr., Pittsburgh; John L. Merrill,

(*Continued on page* 36)

(*Continued from page 34*)

Sven J. Nordstrom, and Herbert S. Shuey, San Francisco; Elisha Walker, New York, and W. F. Crawford, Chicago.

The Pittsburgh Equitable Meter Company name will be continued as a subsidiary of the Rockwell Manufacturing Company, marketing measuring equipment for water, gasoline, oil and other liquids, manufactured in plants located in Pittsburgh, Brooklyn, and Hopewell, New Jersey.

The increasing scope of the company's manufacturing facilities and products prompted the change in the company name. In addition to Pittsburgh Equitable Meter Company, the Rockwell Manufacturing Company is the parent company of Merco Nordstrom Valve Company, Oakland, California; Rockwell Machine Company, Hopewell, New Jersey; Edward Valve & Manufacturing Company, Inc., East Chicago, Indiana; Delta Manufacturing Company, Milwaukee, Wisconsin; V. & O. Press Company, Hudson, New York; Crescent Machine Company, Leetonia, Ohio; Rockwell International Corporation, New York, New York; and Monessen Foundry & Machine Company, Monessen, Pennsylvania.

Officers of Rockwell Manufacturing Company include Col. Rockwell, president; W. F. Rockwell, Jr., vice president and general manager; J. Frank Drake, W. S. Potter, and A. J. Kerr, vice presidents; H. A. Phillips, vice president and secretary; Edgar W. Myers, treasurer; and E. W. Meyers, Jr., controller.

New Finger Cots and Dust Goggles Designed

Two new scientifically designed finger cots, available in small, medium (standard), and large sizes, are announced by American Optical Company, Southbridge, Massachusetts.

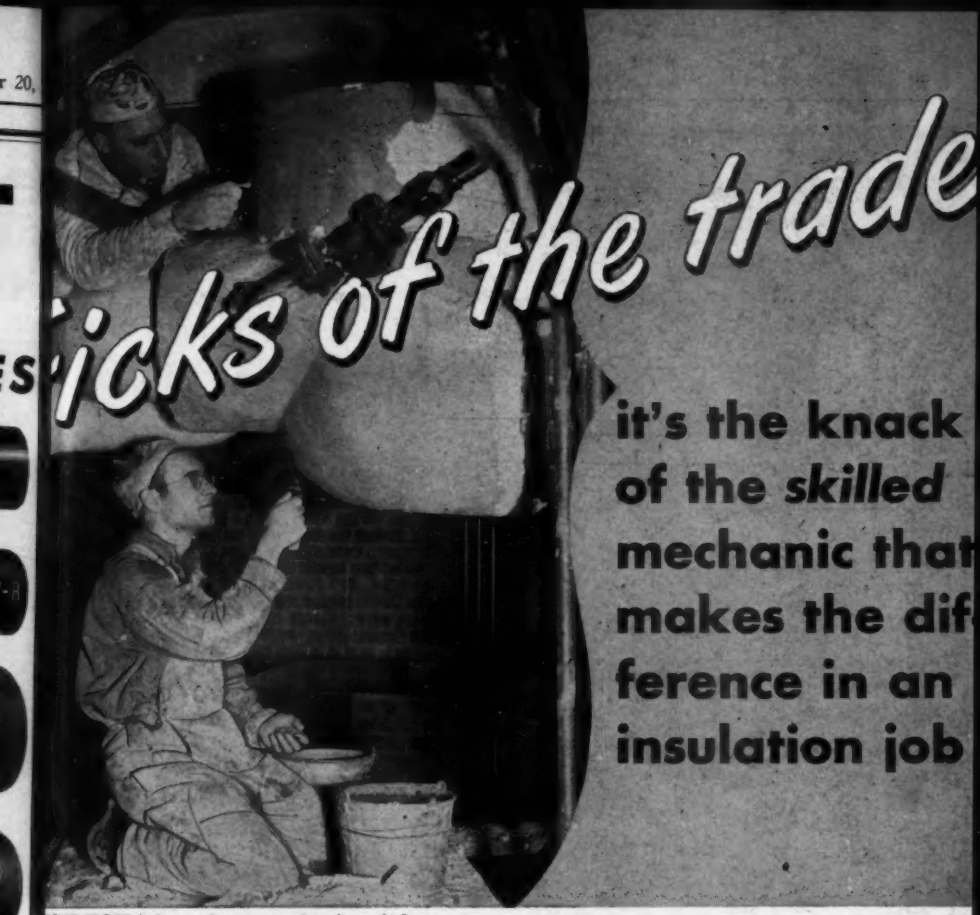
One of the new AO Sta-Set cots, made from selected grain leather, is useful wherever sensitivity of touch is an important factor—such as soldering small wire, assembly work, etc. The second cot is made from high-grade chrome tanned cowhide leather and is recommended for jobs involving hard usage—such as polishing, burring, grinding small parts, etc.

The new cots provide rugged protection for both front and back of fingers, and are designed to stay in place.

American Optical Company also announces the production of a new dust goggle, designed to provide greater safety and comfort.

The new goggle is equipped with an acetate eyecup that permits a wider angle of vision and is more comfortable to wear. In addition, a thin wire mesh screen, on the inside of each side shield, gives maximum protection against fine dust particles.

The new eyecups are individually shaped to conform to the contour of the right and left eye. They fit snugly against the face to keep out dust and powder. The ventilating system extends over a larger area to reduce the possibility of fogging. The fine wire mesh screens prevent dust from reaching the eye. They are easily cleaned by a blast from an air hose or a thorough washing.



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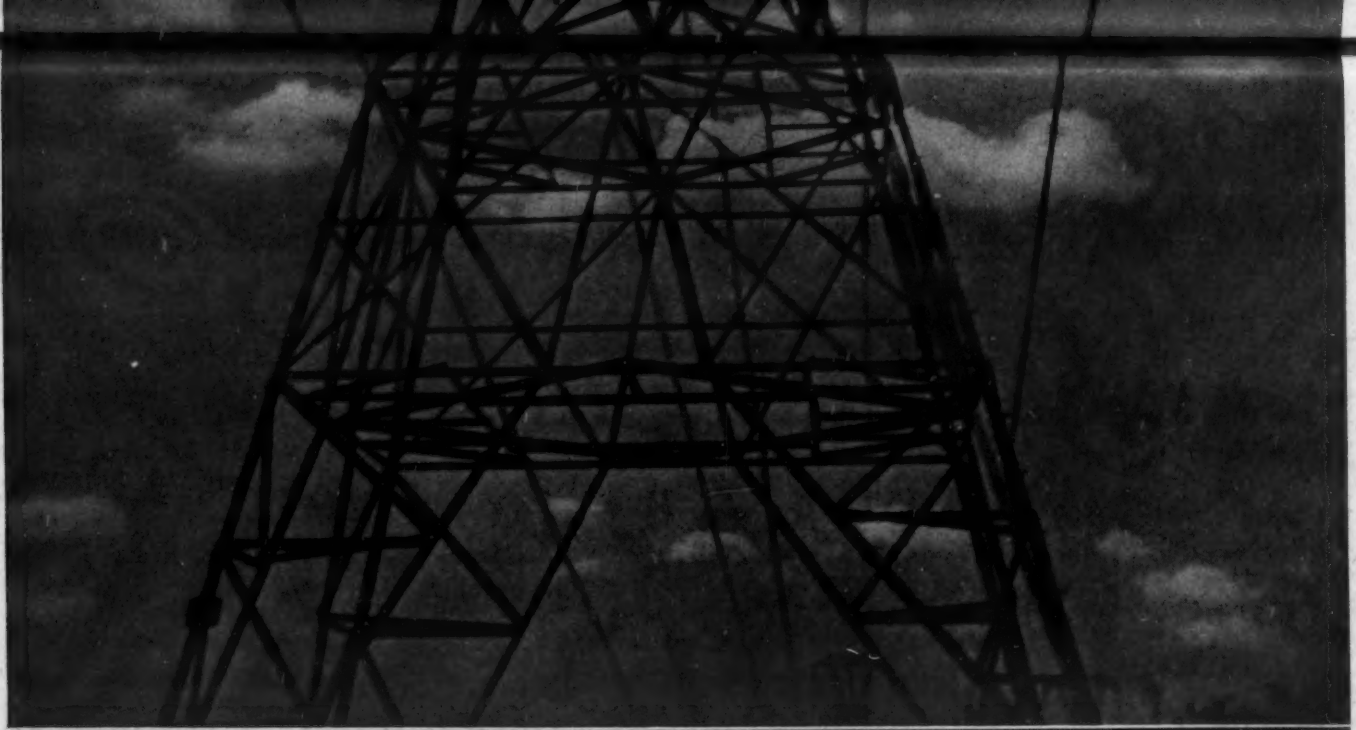

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Electric utility companies that are using this MPA* slidefilm presentation on *Electronic Induction Heating* recognize its double-duty value in load building.

Showings of this slidefilm to customers engaged in metal working have helped widen their appreciation of what this improved method of electric heating can do in cutting costs, saving time, and improving workmanship. But equally important, the manuals, the meetings, and the subsequent discussions have helped to give power sales engineers an intimate and up-to-date knowledge of electronic induction heating of metals for increasing production. Contact with industrial customers has been wide and strengthened.

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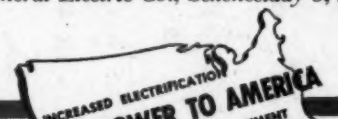
If you are not yet fully familiar with Electronic Induction Heating program, r available for use by utilities, check w your G-E representative. *Apparatus De General Electric Co., Schenectady 5, N. Y*



This co-operative long-range plan has been built around a series of load-building presentations to be made—with your help—to industrial and farm groups. In addition to Electronic Induction Heating, programs are now available on Electronics and Laundry Modernization. Sewage Treatment, Resistance Welding, and a More Power to the American Farmer series will be available early in 1946. They will help you develop (1) greater power sales and utilization of existing capacity, (2) increased use of modern electric equipment, (3) more efficient operation and lower costs for customers. Full utilization of these tools will also mean more jobs and a higher standard of living for all America. For help in putting the MPA program into action in your territory, call on your local G-E office.

GENERAL ELECTRIC

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PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

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FORTNIGHTLY

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WASHINGTON, D. C.

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(This section of the magazine, which comprises the decisions, orders, and recommendations of courts and commissions, is too voluminous to be included in this index. These reports are published annually in their entirety, in five bound volumes, together with the Annual Digest; copies may be obtained from the publishers, Public Utilities Reports, Inc., *Munsey Building, Washington, D. C., upon application.)*

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